FEDERAL MARITIME COMMISSION
SERVED FEBRUARY 17, 1987
EXCEPTIONS DUE 3-11-87
REPLIES TO EXCEPTIONS DUE 4-2-87

FEDERAL MARITIME COMMISSION

Docket NO. 84-38

ARIEL MARITIME GROUP, INC., ET AL.

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1. Where a corporation, subject to Commission jurisdiction, misdeclares cargo by misdescribing the cargo and/or by giving inaccurate weight or measurement, and where it pays the carrier a lower rate under one bill of lading and then bills the shipper for a higher rate under a second bill of lading for the same shipment, such activity, coupled with the facts that the shipments were numerous, involved substantial sums of money, took place over a long period of time and involved the use of other corporations which were controlled and operated by the same individual constitutes a knowing and willful attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable and is therefore a violation of section 16, Initial Paragraph, Shipping Act, 1916. In addition, those other corporations which were involved in the shipments have also violated section 16.

2. Where a corporation, subject to Commission jurisdiction, falsely indicates that cargo is to be transshipped and thereby receives a contract rate from the carrier which is lower than the true rate under one bill of lading; and where the corporation bills the shipper for a higher rate under a second bill of lading for the same shipment, such activity coupled with the facts that the shipments occurred regularly over a long period of time, involved substantial sums of money, also involved the use of other corporations who were controlled and operated by the same individuals, constitutes a knowing and willful attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable, and is, therefore, a violation of section 16, Initial Paragraph, Shipping Act, 1916. In addition, the other corporations which were involved in the shipments have also violated section 16.

3. Where a corporation, subject to Commission jurisdiction, charges shippers rates which were not included in tariff on file with the Commission, such acts violated section 18(b)(3) of the Shipping Act, 1916.

4. The maximum penalty for violation of section 16, Initial Paragraph, is $25,000.00 for each violation, while the maximum penalty for violation of section 18(b)(3) is $5,000.00 for each day such violations continue. The violations here were extensive in scope and were grievous in that they involved a deliberate scheme whose purpose was to conceal what was happening and to avoid detection by the use of a large number of corporations. Penalties are assessed as follows:

Amount		
Under Section 16	Under Section 18(b)(3)	Party
	$50,000	Interlink
$150,000		Ariel and Interlink (jointly and severally)
50,000		Ariel and Consolidated (jointly and severally)
25,000		Ariel, Klaus and Javelin (jointly and severally)
25,000		Ariel, Klaus and Oasis (jointly and severally)
25,000		Oasis, Ariel and Joshua Dean (jointly and severally)
5,000		Ariel and Cheerio (jointly and severally)
5,000		Ariel and Liberty (jointly and severally)

5. Where an individual or individuals take part in a scheme to violate the Shipping Act by using various corporations controlled by one or more of them; and where there is an attempt to conceal and obfuscate who founded, operated and controlled the corporations involved, a cease and desist order is warranted against any and/or all of the corporations and individuals to insure that the Shipping Act, 1984, will not be violated in the future. Such cease and desist orders are appropriate even though the violations involved here relate to the Shipping Act, 1916, and no findings of violations of law are made against the individuals. Further, such cease and desist orders do not require the piercing of the corporate veil of any of the corporations involved.

Martyn C. Merritt for respondents Ariel Maritime Group, Inc., Consolidated Commodities of America, Inc., Charles Klaus & Co., Ltd., Oasis Express Lines, Javelin Lines, Cheerio International, Liberty Lines, Mr. Tilak Sharma, and Mr. Raymond Boudart.
Joseph P. Slunt as Hearing Counsel.

SUPPLEMENTAL INITIAL DECISION[1] OF JOSEPH N. INGOLIA,
ADMINISTRATIVE LAW JUDGE

Preliminary Matters

An Initial Decision was served in this proceeding on June 13, 1985. In that decision Interlink Systems Incorporated d/b/a Interlink Lines (Interlink), Consolidated Commodities of America, Inc. (Consolidated), Merritt Enterprises Inc. d/b/a Cheerio International (Cheerio) and Liberty Shipping International d/b/a Liberty Lines (Liberty) were all assessed certain penalties for violation of section 16 of the Shipping Act, 1916, and Interlink was assessed an additional penalty for violations of section 18(b)(3) of the Shipping Act, 1916. Ariel Maritime Group Inc. (Ariel), Oasis Express Lines, a division of Charles Klaus & Co., Ltd. (Oasis), Javelin Lines, a division of Charles Klaus & Co., Ltd. (Javelin), and Joshua Dean & Co. (Dean) were not found to have violated the Shipping Act and cease and desist orders were not issued against any of the corporations or the individuals involved. The Initial Decision listed a series of unanswered questions as the reason why no violations were found regarding Klaus, Oasis, Javelin, Dean and why no cease and desist orders were issued against the individual respondents.

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[1] This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

On December 16, 1985, the Commission remanded the proceeding raising a series of questions that will be dealt with in turn in this Supplemental Initial Decision. As a result of the remand Martyn Merritt is now representing himself, Tilak Sharma and Raymond Boudart as well as Ariel, Consolidated, Klaus, Oasis, Javelin, Cheerio and Liberty. He does not represent Interlink or Dean, and in fact the latter corporations were not represented by anyone throughout the proceeding and no defense was offered in their behalf.

Finally, it should be noted that the evidence presented on remand has, to a large extent, clarified questions which remained at the time of the original Initial Decision. Consequently, new findings of fact will be made which will supersede those set forth in the original Initial Decision. Further, while the old evidentiary record is hereby incorporated by reference, its import has been enlarged and even changed by the remand and the evidence adduced on remand will be controlling. Throughout this Initial Decision references will be made to the record in both the earlier and remanded proceedings. It should be noted that the following codes are being used:

Tr. 1	- Transcript from the first hearing. Since the pages began with page 1 in each of the three days there is no numerical sequence from day to day and a date such as, (19th), is used with the Transcript reference.
Tr. 2	- Transcript from the second hearing. The pages are numbered sequentially for each of the two days.
TA	- Written testimony of District Investigator, Emmanuel Mingione.
Exs. A-DD	- Joint exhibits from first hearing.
Exs. EE-NN	- Hearing Counsel's exhibits from first proceeding.

Exs. 1-31 - Respondents' exhibits from first proceeding.

Exs. OO-TTT - Hearing Counsel's exhibits from second hearing.

FF - Findings of Fact in the second Initial Decision.

It should also be noted that in some instances a party may be referred to by name with different spellings. For example, Mrs. Merritt's middle name is Ann in her mother's and brother-in-law's affidavits. However, Mrs. Merritt herself uses the middle name "Anne" in signing documents. Whichever is correct both spellings refer to Mrs. Merritt.

Findings of Fact

1. On December 16, 1985, the Commission issued an Order Remanding Proceeding, which in pertinent part states:

> After reviewing the record, the I.D., the respondents' Exceptions and Hearing Counsel's Reply to Exceptions, the Commission has determined that we cannot reach at this juncture a final conclusion as to whether violations of law were committed by any of the respondents. Ultimately, any findings of violations in this case must be based primarily on the shipping documents introduced into the record by Hearing Counsel through the testimony of Mr. Mingione. The Commission is satisfied that the positions of the parties as to the legal significance of those documents have been adequately set forth in the record and analyzed by the Presiding Officer. Although we do not reach th merits of those positions at this time, we see no need for the taking of further testimony or briefing regarding the substance of the documents. The arguments in the respondents' Exceptions and Hearing Counsel's Reply will be preserved for resolution at the appropriate time.
>
> However, the Commission is not satisfied that the record adequately describes the corporate structures of some of the respondents, the relationship (if any) among them and the roles played by certain individuals. There simply are too many important questions that have been left unanswered. Some

of these questions were identified by the Presiding Officer at the close of his Initial Decision. He cited them as the reason why he found no violations by Klaus, Oasis, Javelin, Dean and the individual respondents. Although the commission renders no judgment now regarding that particular conclusion by the Presiding Officer, we have determined that, in light of the matters requiring further investigation, the best exercise of our discretion would be to reopen the record with regard to all respondents. At the close of the remand proceedings, the Presiding Officer will be in a position to reexamine his conclusions (including the possible imposition of penalties or cease and desist orders) with regard to each respondent, if the evidence requires.

* * *

A. Factual Issues Requiring Further Investigation

In order to give maximum guidance to the parties and the Presiding Officer, the Commission sets forth below specific questions that have been raised by the general issues discussed above and should be investigated. This list is meant to be illustrative rather than exhaustive, of course, because the answers to those questions may open up new areas of exploration. Although they have been categorized according to particular respondents, certain questions may apply with equal force to two or more respondents.

1. Ariel

J. A. Mott was president of Ariel from August, 1980 to August, 1983, which encompasses most of the period of apparent violations. After August, 1983, he retained his ownership interest of 200 shares. What does Mott know about the relationship of Ariel and Interlink during the period of record, the chain of command at Interlink, and the shipping transactions under investigation?

Mott may also have information with regard to the ownership, directors, officers and lines of business of ASA Development Co. during the period of record. To whom did Mott report at ASA? In this connection, we note that a representative of ASA attended the annual meetings of the Ariel shareholders. That individual should be identified and, if possible, called to testify as to the nature and ownership of ASA and its relationship with Ariel. Specifically, what representation did ASA have on the Ariel board of directors? Why did the Ariel board shrink from six directors to four between August 1982 and August 1983? At some point during that same period, Martyn Merritt purchased 200 shares of Ariel formerly held by Roy Brookes and became a member of the board. When precisely did that happen? Is there any connection between Merritt's becoming a member of the board and the departure of Arun Dutta and Avinash Kohli? What does Brookes know about

ASA and the day-today relationship between Ariel and *Interlink?*

Before he acquired Brookes's shares, Martyn Merritt was hired as a consultant by Ariel in August 1982. At the same time, his wife Mary Anne was elected assistant secretary of Ariel. This may indicate that the Merritts had a relationship with Ariel before August 1982. What does Mary Anne Merritt know about that and what were her duties at Ariel?

Finally, further information is necessary regarding the basis of the December 1983 Dun & Bradstreet report that 60 percent of Ariel was owned by Charles, Klaus & Co.

2. Interlink

Who are the other owners of Interlink, besides Martyn Merritt, Sharma and Boudart? What do they know about the issues in this case? In view of the ostensibly minor shares held by Merritt, Sharma and Boudart, why has there been no change in the directors and officers since 1980? Do any of the owners of Interlink (including Sharma and Boudart) have interest in Ariel or in ASA?

Is there an agency relationship between Ariel and Interlink? What is Sharma's knowledge on that question and on the day-to-day operations of Interlink? If Interlink realizes a net after-tax profit for a calendar year, how is that profit distributed to Interlink's owners (this has particular relevance to the unlawful freight savings allegedly realized by Interlink during the period of record)? What were Interlink's revenue results for 1981, 1982 and 1983? Who is responsible for maintaining Interlink's finances and preparing its tax returns?

What were the duties of the two Interlink employees during the period of record? Who supervised them? Who directed that the names of Consolidated, Cheerio, Dean, Oasis and Javelin be supplied to the vessel-operating carriers as "agents for shippers"? Who directed them to declare to the vessel operators that the shipments under investigation would be transshipped? Who was responsible for the untariffed rates assessed against certain shipments? What knowledge did they have of the alleged misdeclarations of weight, measurement or commodity on the shipments under investigation?

3. Consolidated

Who were the owners of Consolidated during the period of record? Who were its officers? Who were its directors? Did it have any assets of its own? Did it have any salaried employees? Was the use of Consolidated as "agent for shipper" in the Interlink shipments made known to Consolidated's

officers and directors? Did Consolidated receive any benefit from that practice?

4. Cheerio

Did Martyn and Mary Anne Merritt, Cheerio's owners and officers, know that Cheerio was being used as "agent for shipper" in the Interlink shipments? Did Cheerio receive any benefit from that practice?

5. Liberty

Who were the owners of Liberty (besides Mary Ann Merritt) during the period of record? Who were its directors? Who were its officers? On the two 1983 Liberty NVOCC shipments where cargo may have been misdeclared, who directed that Interlink be listed as "agent for shipper" on the vessel operator bills of lading? Is there any significance in the fact that Thomas Matthews, an Ariel employee, is the U.S. filing agent for Liberty?

6. Oasis and Javelin

Is there any more recent information available on the ownership of Charles, Klaus & Co., the parent of Oasis and Javelin? Who were responsible for the day-to-day operations of Oasis and Javelin during the period of record? On the 1983 NVOCC shipments where cargo may have been misdeclared, who directed that the names of Consolidated, Cheerio and Joshua Dean (ostensibly the ultimate owner of Oasis and Javelin) be used as "agent for shipper" on the vessel operator bills of lading? Is there any significance in the fact that Mary Anne Merritt is the U.S. agent for Oasis and Javelin? Was the fact that Oasis and Javelin were used as "agent for shipper" in connection with the false transshipments known to them? Did they receive any benefit?

B. Issues of Law

In addition to further development of the factual record with regard to the issues discussed in this order, the Commission also wishes the parties to brief and the Presiding Officer to issue a supplemental initial decision on certain issues of law. These include: whether the Commission has the authority to issue cease and desist orders forbidding violations of the Shipping Act of 1984 based on violations of the Shipping Act, 1916, whether a cease and desist order can be issued against an individual even if no findings of violations of law are made against him and, depending on the information developed, whether separate incorporations can and should be pierced in the imposition of sanctions.

2. Martyn Merritt has been in the shipping business at least since 1971, when he and Peter K. Schauer founded the Nautilus Shipping Corporation. (Tr. 2, pp. 222, 247, 248)

3. Mr. Merritt started a new series of business relationships on or about July of 1980. He planned to form "several new NVO lines" and to retain Liberty and Interlink. Mr. Merritt would be "running (on my own) the New York office under a new name." (Ex. 000)

4. On July 2, 1980, Ariel was incorporated in the State of Illinois. Its purpose for being organized was:

> To act as ship agent, ship booker, cargo and freight brokers, sales agents, to trade in international commerce, to represent foreign firms for their commercial sales in the United States, and other business as seen fit by the directors, relative to the foregoing.

Florence J. Pawlowski of 220 So. State St., Chicago, Ill., was listed on the Articles of Incorporation as the Registered Agent as well as the Incorporator. Mary Anne Merritt notarized the document. Florence J. Pawlowski is the mother-in-law of Martyn Merritt. (Ex. GGG, Tr. 2, p. 278)

5. In the Annual Reports of Ariel filed with the Secretary of State of Illinois by Mary Anne Merritt for the years 1981 and 1982, Florence J. Pawlowski was listed as the President of Ariel. (Ex. HHH)

6. By affidavit signed on July 21, 1986, Florence Pawlowski states in pertinent part:

> I reside in Chicago, Illinois and am the mother of Mary Ann Merritt, formerly Mary Ann Pawlowski.
>
> * * *
>
> Neither I nor my husband have any knowledge whatsoever of the shipping industry in general or Ariel Maritime Group, Inc. or

other shipping companies. Specifically, other than the fact that my daughter, Mary Anne, and her husband, Martyn Merritt, are affiliated with Ariel Maritime Group and have been in the shipping business for a number of years. I personally, however, have no knowledge whatsoever of the details of their business nor do I have any information that would be of any use to anyone, including the Federal Maritime Commission, of either Ariel Maritime Group or any other company engaged in the business.

* * *

I feel that we are being singled out for harassment and intimidation solely because my daughter and son-in-law are involved in some dispute with the Federal Maritime Commission and that it is only by virtue of my familial relationship to them that I and my husband are being drawn into whatever problem may exist between the government and my daughter and son-in-law's business interests.

(Ex. III)

7. The Directors of Ariel Maritime Group, Inc., for 1980, 1981 and 1982, respectively, were shown on the corporate books as follows:

Name	Office
J.A. Mott	President
Tilak Raj Sharma	Secretary
Roy Brookes	Treasurer
Raymond Boudart	Vice-President
Arun Dutta	Vice-President (1980-1981)
Avinash Kohli	Vice-President (1980-1981)
Mary Anne Merritt	Assistant Secretary (1982)

(Exs. 1-B, 1-C, 2-A, 2-B, 2-C)

8. The use of the name J.A. Mott was an error. The correct name was James Edward or J.E. Mott. J.E. Mott is the brother-in-law of Mary Anne Merritt and is married to her sister. Mr. Mott in an affidavit dated July 21, 1986, stated in pertinent part:

I am and have for in excess of the past ten years been employed as a body shop mechanic in the Chicago area. I am not now nor have I ever been in the shipping business and I have no knowledge whatsoever of Ariel Maritime Group, Inc.,

other than the fact that my wife's sister and brother-in-law, Mary Ann and Martyn Merritt, are associated with that company.

(Ex. BBB, Tr. 2, pp. 125-130, 280-282)

9. The books of Ariel indicate that in 1981 the company was owned as follows:

Shareholders	No. of Shares
J.A. Mott	200
Tilak Raj Sharma	120
Raymond Boudart	120
Roy Brookes	200
ASA Development Co.	1360

(Ex. 1-C)

10. In 1983, the stock ownership was shown as being the same except that the 200 shares formerly listed for Roy Brookes were shown as being owned by Martyn Merritt. (Ex. 1, Tr. 1 (18th), pp. 127-130, Tr. 1 (19th), pp. 81, 82)

11. According to Mr. Merritt, ASA Development Co. is owned by various individuals in the United Kingdom and other locations and Mr. Merritt has no ownership interest in ASA. (Tr. 1 (19th), pp. 23, 24, 79-82)

12. Ariel entered into an agency agreement with Charles Klaus & Co. Ltd. (Klaus) on September 8, 1980, wherein among other things it was to represent Transafrica Line, Javelin Line, Oasis Express Line, Buccaneer Line and Union Exportadora Line. (Ex. 30, Tr. 1 (19th), p. 13, 99)

13. Beginning on May 21, 1981, and continuing through August 19, 1983, Ariel as agents for Javelin and Oasis entered into a series of connecting carrier agreements and amendments with Dart Containerline Company (Dart) where Dart, for example, on a shipment from New York to

Turkey would transport the cargo from the U.S. to a European port such as Antwerp, Belgium. The cargo would be carried on Javelin or Oasis containers. Dart would issue its bill of lading from New York to Antwerp and would not see a second bill of lading of Javelin or Oasis from New York to Turkey. (Exs. OO, PP, QQ, RR, TT, Tr. 2, pp. 11-30)

14. The agreements and amendments referred to in the preceding paragraph were signed by Martyn Merritt or, in some instances, his assistant Adrienne Gross who had Merritt's permission to sign. When Mr. Merritt dealt with Dart he represented himself as the President of Ariel. Dart invoiced and received payments from Ariel for cargo moving under the connecting carrier agreements. (Ex. SS, Tr. 2, pp. 11-30)

15. By letter dated November 12, 1982, Ariel, by its Secretary, Mary Anne Merritt, sent a letter to the American National Bank and Trust Co. of Chicago, together with a Certified Resolution of Board of Directors, certain signature cards, and other documents. The documents state that Martyn Merritt was President of Ariel on September 9, 1980, and on June 18, 1981. The signature card lists Mr. Merritt as President, Mr. Sharma as Vice-President, Mr. Boudart as Treasurer and Mary Anne Merritt as Secretary. Only Martyn Merritt has individual authority to sign alone to validate checks or withdrawals. (Ex. TTT, Tr. 2, pp. 216-221)

16. Ariel held itself out as the general agent for Interlink, Oasis and Javelin. (Ex. II)

17. Interlink Systems, Incorporated (Interlink), is an Illinois corporation, incorporated on February 6, 1980. The Incorporator was listed as Tilak Raj Sharma and the Registered Agent is M.C. Merritt. (Exs. 27, 28)

18. Martyn Merritt, Mary Anne Merritt, Tilak Raj Sharma and Ray Boudart have been directors of Interlink since its inception. Sharma is its President, Martyn Merritt its Vice-President and Mary Anne Merritt has been its Treasurer, Secretary and Assistant Secretary. (Ex. 29)

19. Martyn Merritt owns ten percent of the stock of Interlink, while Sharma and Boudart each own six percent. Mr. Merritt testified the rest is owned by 8 or 9 other people. (Tr. 1 (18th), pp. 147, 148, 145, 155)

20. The main business of Interlink is to act as a Non-Vessel Operating Common Carrier (NVOCC) from the United States to Europe. Interlink represents itself in New York, but utilizes various agents throughout the United States. (Ex. 24, Tr. 1 (18th), pp. 157, 158)

21. At least since 1983, Ariel and Interlink share office space at the same New York address, 90 West Street, Suite 1100. Interlink had 2 employees during the period involved in this proceeding and Ariel had approximately 48 employees. (Exs. 19-22, Tr. 1 (19th), pp. 92-95, 101, 102, 159, 163)

22. Ariel bills Interlink for the services it provides and in 1983 Interlink paid Ariel $277,875.00 for "Rent, staff, office, etc., as shared costs with host company," as reflected in their federal income tax return. Interlink's return showed Gross Receipts of $1,273,303.00, Cost of Goods Sold of $984,787.00, and Taxable Income of $7,231.00 after deduction of the cost of services noted above. Ariel's return showed Gross Receipts of $6,334,108, Cost of Goods Sold of $5,057,475 and Taxable Income of $24,020.00. It lists Compensation of Officers as $170,438.00, Rents of $123,026 and Other Deductions (schedule 1 not submitted) of $483,760. (Exs. 4, 18)

23. On or about September 15, 1981, Mary Anne Merritt, as Secretary of Interlink, filed a Certified REsolution of Board of Directors with the American National Bank and Trust Company of Chicago, which she notarized as well, listing Tilak Sharma as President, Raymond Boudart as Vice-President, Mary Anne Merritt as Secretary and Martyn Merritt as Treasurer. Only Martyn Merritt has individual authority to sign to validate checks or withdrawals. (Ex. SSS, Tr. 2, p. 218)

24. By letter dated June 28, 1978, Martyn Merritt on behalf of Nautilus Shipping Corporation, sent a letter to S.Y. Yang & Company, attn: Mr. Samuel Yang. The company is located in Hong Kong and is a Certified Public Accountant Firm. The letter refers to a $500.00 retainer paid for the incorporation of a private limited company, namely, Charles Klaus & Co. Ltd. The "Objects of The Company" were "General Trading, Steamship Agents and Operators, Forwarding, Leasing, Finance, Agency, and other activities as deemed fit by the Directors." The Directors were listed as Charlotte G.K. Ballerman (correct spelling is Ballermann) and Mary Anne Pawlowski (Mrs. Merritt). Contracts and Deeds were to be signed by Mary Anne Pawlowski as well as "Cheques and Negotiable Instruments." Stock in the company was to be held as follows:

Name of Shareholder	No. of Shares
M.C. Merritt	1999
P.K. Schauer	1999
C.G.K. Ballerman	1
M.A. Pawlowski	1

On the instruction sheet form under "Remarks," there was the statement:

> Ballerman should also be Vice-President of company and Treasurer, and Pawlowski should be President and Secretary, after the initial incorporation.

(Ex. MMM)

25. There were several letters to Mr. Yang signed by Martyn Merritt regarding the incorporation of Charles Klaus & Co. Ltd. In one letter dated October 4, 1978, Mr. Merritt stated:

> . . . We would prefer all the shares that were previously supposed to be issued in the name of Merritt and Schauer to be issued instead to Anglo Bavarian Investments Ltd. at the following address:
>
> PO Box 694
> Grand Cayman
> Cayman Islands B.W.I.

Mr. Merritt's request was honored and the stock was issued to Anglo-Bavarian. (Ex. MMM)

26. Peter K. Schauer is a former business associate of Martyn Merritt. Each owned a 50 percent interest in Nautilus Shipping Corporation which was founded in 1971. From 1971 through October of 1980 Mr. Schauer and Mr. Merritt were business associates and formed several other companies besides Nautilus, including Container Lloyd. They incorporated Charles Klaus & Company "to give the existing companies and activities a more international flair and more of a broader range and display for worldwide activities." (Tr. 2, pp. 223-225)

27. The name "Charles Klaus" represents a combination of Mr. Merritt's middle name (Charles) and Mr. Schauer's middle name (Klaus). The name "Anglo-Bavarian" refers to Mr. Merritt being English and Mr. Schauer being Bavarian. Mr. Ballerman is Mr. Schauer's mother

and she was involved in Charles Klaus & Co. in name only and was not active in it at all. Mrs. Ballerman never had any knowledge that her name was being used and did not sign her name to any documents as a director. (Tr. 2, pp. 225, 226, 229, 230, 232, 233)

28. Both Mr. Merritt and Mr. Schauer were Officers and Directors of Anglo-Bavarian, which Mr. Schauer characterized as a "shell company set up in the British West Indies, similar to, probably, the objectives and goals associated with the formation of Charles Klaus and Company in Hong Kong." (Tr. 2, p. 225)

29. In the creation of Charles Klaus & Co., Mr. Merritt and Mr. Schauer did not want to be directly involved because it could have constituted a conflict of interests with other activities they were engaged in at that time. Consequently, they furnished the names of Mrs. Ballerman and Mary Anne Pawlowski as directors. They followed the same procedure with other corporations. (Tr. 2, pp. 244-246)

30. While he was associated with Mr. Merritt, Peter Schauer became aware that names were being used in business dealings that were fictitious and non-existent. He cited such names as Mr. Finkelstein, Jim Davis, Michael Leo Collins and Roy Brookes. (Tr. 2, pp. 142, 143, 235, 236, 237).

31. Sometime in the latter part of 1980 Mr. Merritt and Mr. Schauer parted company. Mr. Schauer testified that he was aware of improper activities on the part of Mr. Merritt with respect to the operation of Nautilus and Container Lloyd and that they both "were skimmed of considerable assets before and after both companies ceased operations." (Tr. 2, pp. 261-263)

32. By letter dated August 27, 1981, Mr. Schauer wrote Mr. Yang in Hong Kong to delete the name of his mother, Johanna Klara Ballermann, as a Director of Charles Klaus. He received an answer stating that Mrs. Ballermann's name had been deleted as a result of a letter of resignation ostensibly signed by her on September 1, 1980. Mr. Schauer testified the signature on the letter of resignation purporting to be that of his mother was not, in fact, her signature. (Ex. MMM (Attachments 50-52), Tr. 2, pp. 228-230)

33. In a report filed April 29, 1981, Mary Anne Pawlowski (Mrs. Merritt) notified the Hong Kong Registrar General's Department that Charlotte Ballerman had resigned as a director of Klaus on September 1, 1980, and had been replaced by Florence Wleszen, Mrs. Merritt's mother's maiden name. (Tr. 2, p. 283, 284)

34. As of September 1, 1980, Martyn Merritt and Peter Schauer were directors of Charles Klaus & Co. Ltd. (Tr. 2, p. 228)

35. On October 15, 1981, Joshua Dean & Co., Ltd., was incorporated in Great Britain. The objects for which the company was established were broad and varied and are set forth in the "Memorandum of Association." The official corporate documents show that the share capital of the company was 1000 pounds divided into 1000 shares of 1 pound each. The original Memorandum of Association was filed by John Wildman and Mark John Brazier who were each listed as owning one share. Wildman was listed as the first Director on the Articles of Association and Brazier as the first Secretary. On October 15, 1981, a "Notice of change of directors or secretaries or in their particulars" was filed by Martyn Merritt. In it Mr. Merritt stated that John Wildman had resigned as Director and Mark John Brazier had resigned as Secretary. Mr. Merritt

then was shown as the Secretary and Mary Anne Pawlowski as a Director. (Ex. NNN)

36. In a Directors' Report for the period October 15, 1981 to April 30, 1983, it is indicated that Joshua Dean & Co. Ltd. "commenced to trade on 1st April 1982, using the trading name of New Media Advertising." It listed Directors as Mr. A. Sethi, Mr. M.C. Merritt and Ms. A. Pawlowski. On a balance sheet as of April 30, 1983, the company showed a loss of 271 pounds. The balance sheet was signed by Martyn Merritt and M.A. Pawlowski as Directors. In "Notes To The Accounts For the Period From 15th October 1981 To 30 April 1983" under the "Share Capital" heading, the statement showed "authorised" shares in 1983 of 1000 and "Issued and Fully Paid" shares as 2. The statement also indicates that "The Directors consider Charles Klaus & Co. Limited a company incorporated in Hong Kong to be the ultimate holding company." In a document entitled, "Return of allotments of shares issued for cash," duly filed in England, it is indicated that Joshua Dean & Co. on May 12, 1983, allotted 998 shares of stock to Charles Klaus & Co. Ltd. The name and address of the allottee was listed as Charles Klaus & Co. Ltd., Hong Kong c/o 90 West Street, New York, and the document was certified by Martyn Merritt. Later forms dated October 14, 1983, and signed by Mr. Merritt shows himself, residing at 87 Broadview Avenue, New Rochelle, New York, and Anil Sethi as Directors. Mr. Sethi is also listed as a Director of Ariel Maritime (UK) Limited. The same information is shown on the "annual return of a company having a share capital" which was signed by Martyn Merritt as a Director and M.A. Pawlowski as Secretary. The Return listed Charles Klaus & Co. Ltd. as owning 999 shares of stock and Broadview Developments Ltd., 90 West Street, New

York, as owning 1 share. (Ex. NNN, Tr. 2, pp. 180-182, 189, 190, 207-210)

37. Mr. A. Sethi was originally identified by Martyn Merritt as the person who represented the ASA Development Company which was shown on Ariel records as the majority stockholder. (Tr. 2, p. 131) Mr. Sethi, in addition to the various positions ascribed to him in the preceding paragraphs, is the Managing Director of Ariel Maritime (U.K.) Ltd., a subsidiary of Ariel maritime Group, Inc., which holds itself out as providing services as "Ships Agent-Freight Forwarding-Chartering-Cargo Consolidating-NVOCC." (Exs. CCC, DDD, Tr. 2, pp. 130, 131) Mr. Sethi represented Ariel Maritime Group, Inc. in its dealings with TMT Shipping and Chartering of Louisiana at least as early as 1981 (Tr. 2, pp. 131, 186-189) By registered letter dated October 16, 1986, sent to Mr. Sethi at the address listed on several official documents, the Federal Maritime Commission requested certain information relative to this proceeding. Mr. Sethi to this date has failed to respond to those inquiries. (Ex. EEE)

38. Consolidated Commodities of America Inc. (Consolidated), as per its letterhead, is involved in exporting, importing, trading, manufacturing and distribution. It was initially incorporated in New York State on April 6, 1977, under the name Container Lloyd (New York) Inc. A certificate of change, effective November 3, 1982, was filed by Mr. Sharma, designating himself as resident agent. An amendment filed by Sharma, the President of the corporation, changed the corporate name to Consolidated. Consolidated has the same office space and telephone number as Ariel. No information is in the record regarding its present owners and officers. (Ex. TA, pp. 22-23)

39. Cheerio is owned by its President, Mary Anne Merritt and its Vice-President, Martyn Merritt. The exact nature of the firm is not disclosed in the record although Mary Anne Pawlowski is listed as Vice-President of Cheerio's travel agency. (Ex. TA, p. 23)

40. Liberty is a company involved in shipping. Martyn Merritt is a Director and Mary Anne Merritt owns stock in the company (Tr. 1 (19th), pp. 91-101)

41. Oasis and Javelin are divisions of Charles Klaus & Co. Ltd. They operate as carriers in the foreign commerce. (Exs. 9, 9-A, 9-B, 10, 10-A)

42. On July 15, 1981, Ariel Maritime Group Inc., as principal, entered into a contract with Hohenstein & Company Inc. as agent wherein Hohenstein agreed to perform certain services for Ariel which identified itself in the agreement as:

> . . . managing agent for various entities engaged in the business of owning, operating, and maintaining an integrated, intermodal transportation service as non-vessel operating common carriers to consolidate and transport freight to and from domestic and overseas locations.

The agreement was signed for Ariel by Martyn Merritt. (Ex. JJJ, Tr. 2, pp. 151-153)

43. Sometime in 1981 Alpha International Forwarding entered into a verbal agreement with Ariel Maritime Group Inc. to perform certain forwarding services for Ariel. Mr. Merritt, Mr. Boudart and Mr. Sharma represented Ariel and Mr. Daniel Petrocini and Mr. Fred Daya represented Alpha. Alpha believed the Ariel Maritime Group Inc. was composed of several entities including Interlink, Consolidated, Cheerio, Joshua Dean, Javelin and Oasis. (Tr. 2, pp. 31-70, 72-88, 98)

44. Alpha performed the services agreed to which involved the preparation of the export bill of lading and the export declarations on approximately 200 shipments. In return Alpha received 5 dollars per shipment. (Tr. 2, pp. 21-33, 66) The initial arrangement was that Ariel was to send the shipping documents to Alpha but this was not done. Instead, it was handled verbally and Alpha used the information provided to them by an employee of Ariel. (Tr. 2, pp. 33, 34, 73, 74, 79) Ariel supplied Alpha with the name of the shipper who usually was Consolidated and the description of the cargo being shipped. (Tr. 2, p. 35) Alpha would then aggregate the charges for a number of shipments and would send the bill to Consolidated on the instruction of Ariel's employee. The bill was paid by Consolidated, which listed its address as 140 Cedar Street, New York City. (Tr. 2, pp. 35, 36, 38, 46, 51, 62, 67, 85, 100)

45. During the period from October 20, 1981, through August 7, 1982, the Investigating Officer listed 63 shipments misdeclared by commodity and/or weight or measurement which he classified as a "Schedule of Shipments Misdeclared by Interlink and Shipped Under the names CCA, AMGI, JDC."[2] (Ex. TA, Attachment A)

46. An examination of the Schedule and the exhibits related to the specific shipments involved indicates that there were two bills of lading involved in each shipment. One was a VOCC (carrier) bill of lading which generally listed Consolidated as the shipper/exporter and Alpha International as Forwarding Agent. The commodity description (e.g., cellulose acetate) and weight or measurement was also listed.

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[2] CCA is Consolidated, AMGI is Ariel and JDC is Joshua Dean. There was only one shipment on the schedule listing Ariel and at trial the listing was changed by agreement of the parties to Consolidated (Shipment Q-20).

The second bill of lading was an Interlink Bill of Lading where the real shipper (e.g., Olin Corporation) was listed as Shipper/Exporter and its freight forwarder (e.g., Rogers & Brown Custom Brokers Inc.) was so listed. The commodity description and weight or measurement was also listed on the bill of lading, but the commodity description differed from that shown on the other bill of lading (e.g., Cellulose, Film, "First Quality," rather than cellulose acetate). As a result the amount paid to the carrier (e.g., U.S. Lines) by Interlink for cellulose acetate was considerably less than the amount which would have been for Cellulose Film "First Quality." (Ex. TA, Appendix A; Entire Record; see Tr. 1 (17th), pp. 47 et seq., and Ex. L-16, for example, containing various pertinent documents.)

47. During the period May 8, 1982, through October 18, 1983, the Investigating Officer listed 32 shipments misdeclared by commodity and/or weight or measurement which he classified as "Schedule of Shipments Misdeclared by Interlink and Shipped Under the Interlink Name." (Ex. TA, Appendix B)

48. During the period November 18, 1981, through May 3, 1982, the Investigating Officer listed 62 shipments which he classified with the self-explanatory heading, Schedule of Interlink Bills of Lading for Which No Commodity Rate was Filed." (Ex. TA, Attachment C)

49. During the period from September 14, 1981, through October 28, 1983, the Investigating Officer listed 24 shipments which he classified with the self-explanatory heading, "Schedule of Interlink Shipments Declared for False Transshipments Under Javelin and Oasis Names." These shipments involved two bills of lading, similar to what is described in

paragraph 46 above. However, the Shipper/Exporter on the VOCC (carrier) bill of lading was either Oasis or Javelin (Ex. TA, Attachment D)

50. During the period from October 25, 1981, through April 17, 1983, the Investigating Officer listed 7 shipments which he classified as "Schedule of Misdeclared Shipments, Javelin, Oasis, Liberty." Again these shipments involved two bills of lading, one bearing the name of the VOCC (carrier) and the other bearing the name of either Javelin, Oasis or Liberty. The latter bill of lading showed Ariel as "agent." The shipper/exporter on the VOCC bill of lading was either Consolidated, Cheerio, Joshua Dean or Interlink and the misdeclarations involved weight, measurement and/or commodity. (Ex. TA, Attachment E)

51. The Investigating Officer also prepared a schedule with accompanying exhibits which he termed "Schedule of Misdeclarations, Interlink Lines to United States Lines." Therein, he grouped shipments from April 1, 1982, through August 21, 1983,and showed the total of actual freight costs as $106,554.49, a total of freight billed to Interlink of $52,410.49, and a resultant saving to Interlink of $54,144.36. (Exs. L, L-1 through L-23)

52. The Investigating Officer prepared a schedule with accompanying exhibits which he termed, "Schedule of Misdeclarations, Interlink Lines to Dart Containerline Ltd." Therein, he grouped shipments from February 6, 1982, through July 29, 1982, and showed the total of actual freight costs as $98,698.00, a total of freight billed to Interlink of $53,940.00, and a resultant saving to Interlink of $44,758.00. (Exs. O, O-1 through O-24)

53. The Investigating Officer prepared a schedule with accompanying exhibits which he termed, "Schedule of Misdeclarations,

Interlink Lines to Trans-Freight Lines, Inc." Therein, he grouped shipments from January 10, 1982, through August 31, 1983, and showed the total of actual freight costs as $93,875.00, a total of freight billed to Interlink of $56,374.00, and a resultant saving to Interlink of $36,017.00. (Exs. Q, Q-1 through Q-28. Exhibit Q-16 was deleted at trial.)

54. The Investigating Officer prepared a schedule with accompanying exhibits which it termed, "Schedule of Misdeclarations, Interlink Lines to Sea-Land Service, Inc." Therein, he grouped shipments from April 17, 1980, through October 21, 1983, and showed the total of actual freight costs as $15,333.63, a total of freight billed to Interlink of $7,337.28, and a resultant saving to Interlink of $7,996.35. (Exs. S, S-1 through S-6)

55. At least since 1983, Ariel and Interlink share office space at the same New York address. Ariel provides Interlink with only two employees as well as other services, such as tariff filing. Interlink maintains separate bank accounts and issues its on invoices and statements. (Exs. 19-22, Tr. 1 (19th), 92-95, 101, 102, 159, 163)

Ultimate Findings of Fact

56. Ariel, Interlink, Consolidated, Cheerio, Liberty, Oasis, Javelin, Joshua Dean, Tilak Sharma, Ray Boudart and Martyn Merritt, were all involved in violating either section 16 (Initial Paragraph) and/or section 18(b)(3) of the Shipping Act, 1916, during the period of time involved in this proceeding. Their involvement was directed by Martyn Merritt who exercised dominant control over all of them and their activities. (FF 2-44)

57. Ariel, Interlink, Consolidated, Cheerio, Liberty, Oasis, Javelin and Dean have violated section 16, Initial Paragraph, of the Shipping Act, 1916 (46 U.S.C. app. § 815), by knowingly and willfully obtaining or attempting to obtain transportation by water for property at less than applicable rates. (Ex. TA, attachments; FF 2-47)

58. Interlink violated section 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. § 817) by charging different rates for the transportation of property than the rates filed with the Commission in tariffs in effect at the time the shipments were made. (FF 48)

59. The assessment of civil penalties against the parties named above in paragraphs 57 and 58, respectively, for violations of the Shipping Act, 1916, is warranted, and because of the seriousness of the violations is assessed as follows:

Amount		
Under Section 16	Under Section 18(b)(3)	Party
	50,000	Interlink
150,000		Ariel and Interlink (jointly and severally)
50,000		Ariel and Consolidated (jointly and severally)
25,000		Ariel, Klaus and Javelin (jointly and severally)
25,000		Ariel, Klaus and Oasis (jointly and severally)
25,000		Oasis, Ariel and Joshua Dean (jointly and severally)
5,000		Ariel and Cheerio (jointly and severally)
5,000		Ariel and Liberty (jointly and severally)

60. Martyn Merritt controlled the operations of all of the corporate respondents. He, with the aid of Sharma, Boudart and his wife, Mary Anne Merritt, not only caused some of the corporations to violate sections 16 and 18(b)(3) of the Shipping Act, 1916, but he engaged in a series of manipulative acts designed to conceal the existence and nature of the violations.

61. The record in this proceeding warrants and requires Cease and Desist Orders as to the respondents Martyn Merritt, Tilak Sharma and Ray Boudart as well as against the corporations involved.

Discussion and Conclusions

In its Order of Remand the Commission referred to a series of unanswered questions, most of which were enumerated in the Initial Decision and which resulted from the failure of the record to establish facts regarding the identity of the corporations involved, the interrelation of the various corporate entities and the degree of participation and control exercised by the individuals involved. In addressing the various questions set forth in the Order of Remand those relationships will become clear and then collectively lead to the conclusions reached in this Initial Decision.

1. Ariel

In its Order of Remand (p. 30 et seq.) the Commission refers to J.A. Mott who was shown as President of Ariel from August 1980 to August 1983. It asks what Mott knows about the relationship of Ariel to

Interlink, the chain of command at Interlink, and the shipping transactions under investigation. The record is now clear that J.A. Mott is actually J.E. Mott (James Edward Mott). Mr. Mott is the brother-in-law of Mary Anne Merritt, Martyn Merritt's wife. It is equally clear from his affidavit that Mr. Mott knew nothing about Ariel, Interlink, or ASA Development Co., that he never was actually President of Ariel and that he did not own stock in the company. He states, "I have no knowledge whatsoever of Ariel Maritime Group Inc., other than the fact that my wife's sister and brother in law, Mary Ann and Martyn Merritt are associated with that company." (FF 8)

The evidence of record indicates further that Martyn Merritt planned to form "several new NVO lines" and that he would be "running (on my own) the New York office under a new name." (FF 3) On July 2, 1980, Ariel was incorporated in the State of Illinois. The incorporator and registered agent was listed as Florence J. Pawlowski, who is the mother of Mrs. Merritt. The Articles of Incorporation were notarized by Mary Anne Merritt. (FF 4) Contrary to the corporate minutes which listed Mott as President the Annual Reports of Ariel which were filed with the State of Illinois over the signature of Mary Anne Merritt, listed Florence J. Pawlowski as the President of Ariel. (FF 5) Mrs. Pawlowski has affirmed that, like Mott, she had nothing to do with Ariel. She states:

> Neither I nor my husband have any knowledge whatsoever of the shipping industry in general or Ariel Maritime Group, Inc. or other shipping companies specifically, other than the fact that my daughter, Mary Ann, and her husband, Martyn Merritt, are affiliated with Ariel Maritime Group and have been in the shipping business for a number of years. I personally, however, have no knowledge whatsoever of the details of their business nor do I have any

> information that would be of any use to anyone . . . of either Ariel Maritime Group or any other company engaged in the business. (FF 6)

So, here, the record establishes that neither Mott nor Florence Pawlowski was or has ever been involved with Ariel. Their names were used, and used in such a fashion, so as to constitute the making of a false statement. Certainly, the Annual Reports of Ariel to the State of Illinois were incorrect in listing Mrs. Pawlowski as President, and the corporate minutes were also false statements insofar as they listed Mott as President. (Indeed, even a cursory comparison of signatures indicates that Mott did not sign the corporate minutes.) Mr. Merritt argues that even though the respondents do not deny that Frances Pawlowski and Mott had no "involvement" in the steamship business, "to be an officer in the corporation does not mean that a person has to be involved in a particular business of that corporation." He then states that, "If that was the litmus test that the Hearing Counsel would require upon a person being shown as an officer of a corporation, most of the officers of most of the major corporations in the United States would not need that Litnus test." (Reply Brief, pp. 7, 8) The above argument is, of course, contrived. First of all, it ignores the fact that both Pawlowski and Mott were listed as being President of Ariel during the same time period on two different documents. Secondly, Hearing Counsel is not urging any litmus test. It has established conclusively, that neither Frances Pawlowski nor Mott was ever an officer of Ariel and that the documents indicating otherwise were false. Even Mrs. Merritt apparently recognizes how futile it is to argue that both her mother (Pawlowski) and brother-in-law (Mott) were both President of Ariel. In

her testimony she states as to Pawlowski that, ". . . it is not correct. This person was never President." She alleges that she did not notice the "mistake" when she signed the Annual Report both for 1981 and 1982 (Tr. 2, pp. 279, 280) and when asked who was the President of Ariel in 1981 and 1982, she answered evasively, "Well, I think what is shown is a Mr. J.A. Mott, which is another--and from another report." When the question was repeated as, ". . . to your knowledge, who was President in '81 and '82?", she stated that even though she was the corporation's Secretary, "I'm not aware who the President was." (Tr. 2, pp. 279-281). As to Mott, Mrs. Merritt testified that to her knowledge, Mr. Mott was not President of Ariel. (Tr. 2, p. 291)

Further, with respect to Ariel, the corporate records indicate that sometime between August of 1982 and August of 1983, Martyn Merritt purchased 200 shares of stock from a Roy Brookes. This would seem to coincide with Merritt's assertion that he was hired as a consultant by Ariel in August of 1982, and that his wife became the Assistant Secretary at that time. However, the facts set forth above as well as those which will be discussed later indicate that Merritt was much more than a consultant to Ariel from its inception. The evidence establishes, and we have found as a fact, that he exercised dominant control over Ariel as well as the other corporations involved in this proceeding from their inception. (FF 56) As to Roy Brookes, that name appears on the Ariel corporate minutes as a director and stockholder from 1980 to 1982. (FF 7, 9) The examining agent testified that during his investigation he obtained an official document of the Manchester County court, entitled "In the Matter of Eurobridge International Transport Limited and In the Matter of the Companies Act 1948," dated September 23, 1983.

(Ex. FFF) In it, the Official Receiver was filing a final report in a bankruptcy which dated back at least to sometime prior to September 17, 1980. The Receiver notes that the directors of the company were Martyn Charles Merritt and Peter Klaus Schauer who supposedly resigned in August of 1978 and that Charlotte Grohanna Kara Ballerman, Roy Brookes, Michael William Leo Collins and Dusan Rajicic were appointed directors and Susan Seddon was appointed secretary. He states, "However, notification of these appointments was not sent to the Registrar of Companies," and he concludes, "The directors of the company did not comply with the requirements of the winding-up order to submit a statement of affairs to the Official Receiver. . . ."

Ballerman(n) is Peter Schauer's mother. Given his testimony (FF 26-33), we believe his mother was not a director of Eurobridge, and that Brookes' name was used similarly. Mr. Schauer, who should have known Brookes had Brookes existed, testified that he believed it was a fictitious name as was the name "Collins." (FF 30) Coupled with the agent's testimony (Tr. 1 (18th), 142, 143), and the failure of Mr. Merritt or any other respondent to testify in rebuttal, it may well be that Brookes never existed. Whether he did or not, Merritt controlled Ariel from the beginning and we have so held.

As to ASA which supposedly owns 1360 shares of Ariel, Mr. Merritt originally testified that ASA has been a majority shareholder since the inception of Ariel, and that the ownership preceded his interest in Ariel. (Tr. 1 (18th), pp. 128, 129) He testified that he did not know who owned ASA or whether or not they were incorporated in the United States. He stated he met a Mr. Amy and a Mr. Youd in England who were connected with ASA and they discussed his becoming involved with Ariel.

(Tr. 1 (19th), pp. 22-24, 79, 80) The corporate minutes of Ariel indicate that in 1980 ASA was a shareholder of Ariel but was not represented on the Board of Directors. A. Sethi signed the minutes on behalf of ASA. Mr. Merritt testified that Sethi "was the person designated to represent ASA at some meetings that took place." When asked who designated Sethi, Mr. Merritt responded, "I must assume they did, the principals of ASA." (Tr. 1 (18th), p. 131)

It turns out that Mr. Sethi is the Managing Director of Ariel Maritime (U.K. Ltd.), a subsidiary of Ariel Maritime Group, Inc. Two employees of TMT Shipping and Chartering of Louisiana, which was an agent for Ariel from 1981 to 1983, indicated that Sethi represented Ariel in dealing with TMT as early as 1981 and that Sethi worked and lived in New York. (Tr. 2, pp. 130-133, 186-189) In addition, Mr. Sethi has been listed as a Director of Joshua Dean & Co. from 1983 through 1985. Dean's incorporation will be discussed later. (Ex. NNN) By registered letter dated October 16, 1986, sent to Sethi's address, the investigating agent asked a series of questions related to this proceeding. To this date Mr. Sethi has not responded. (Ex. EEE); Tr. 2, p. 134) In addition, the investigating agent attempted to locate the ASA referred to in the Ariel minutes. He was not successful in doing so. (Tr. 2, pp. 190-195)

All of the above, together with other later discussion relating to Dean and Charles Klaus, lead to the conclusion that ASA had little or nothing to do with the actual operation of Ariel. It may or may not own 1360 shares of stock as Mr. Merritt contends, but it is inconceivable, given the directors and incorporators who were listed by Mrs. Merritt as Mott and Pawlowski at Ariel's incorporation in 1980, that any credence

can be given to Merritt's testimony that he had nothing to do with the incorporation and that ASA brought him in sometime later. We have held and reiterate that Merritt directed the activities of Ariel from its inception. The testimony regarding ASA's participation is, for the most part, not believable.

Further, with respect to Ariel, and Merritt's direction of its activities, Ariel entered into connecting carrier agreements with Dart Containerline Company that were signed by Merritt during the period he contends he was only a "consultant" to Ariel. Further, Merritt represented himself to Dart as the President of Ariel. (FF 13, 14) Merritt also represented Ariel in its dealings with Hohenstein & Company Inc. (Ex. JJJ, Tr. 2, pp. 151-153) Also, in documents sent to the American National Bank and Trust Co. of Chicago by Mr. Merritt, Mr. Merritt was shown as the President of Ariel in 1980 and 1981 (despite the corporate records which erroneously showed Mott and Pawlowski) and only he was able to validate checks or withdrawals without the need for a second signature. (FF 15)

Once again, these facts make it clear that Martyn Merritt controlled Ariel from its inception. Further, Ariel's activities with respect to the other entities involved will be set forth in detail below and will serve to demonstrate how all of the companies were used by Merritt in activities which violated the provisions of the Shipping Act, 1916.

2. Interlink

In its Order of Remand the Commission asks, "Who are the owners of Interlink, besides Martyn Merritt, Sharma and Boudart?" and "What do

they know about the issues in this case?" According to Merritt he owns 10 percent of Interlink and Sharma and Boudart own 6 percent apiece. He states the other 78 percent is owned by "eight, maybe nine" other shareholders. He names a Mr. Van Put of Belgium, Mr. Hanson of Sweden, Messrs. Troy and Richmond in the United Kingdom, Mr. Collins in Canada, Mr. Warsholvsky in the United States and a Mr. Bonavato. (FF 9) Other than Mr. Merritt's testimony there is not a scintilla of evidence in the record indicating these people owned or played any part in the operation of Interlink or that they know anything about the issues in this case. It seems inconceivable that throughout the existence of Interlink there is not one document relating to any one of them, not one indication about their concern for the company's financial condition and not one fact evidencing any active participation by any of them either individually or collectively. Indeed, given Mr. Schauer's testimony regarding the use of fictitious names (Collins, for example), one must ask if all or any of these people named by Merritt actually existed, and if they did, whether or not their names were "used" like those of Mott and Pawlowski.

As to the actual operation of Interlink, the evidence indicates that there were only two clerical employees during the period involved here. Despite the magnitude of this record no one has been able to fully identify them or locate them. Not only that, there has been no attempt by the respondents to identify the two employees, to explain how they worked and who supervised their activities regarding the use of corporate entities and the preparation of the documents involved. We are asked to believe that the use of the names of Consolidated, Cheerio, Liberty Dean, Oasis and Javelin that were supplied to the

vessel-operating carriers as "agents for shippers," just happened, that shipments were labeled as transshipments randomly, and that untariffed rates were assessed against certain shipments without direction. Of course, none of the above makes any sense. We believe that the operation of Interlink and the actions of its employees were controlled by Merritt and that those actions are part of an overally scheme whereby, through the use and manipulation of various corporations, the Shipping Act has been violated.

The record indicates that beginning in 1981, Alpha International Forwarding entered into a verbal agreement with Ariel to perform certain forwarding services. Ariel was represented by Merritt as well as Boudart and Sharma. At the time Alpha believed that the Ariel Maritime Group Inc. included Interlink, Consolidated, Cheerio, Joshua Dean, Javelin and Oasis. (FF 43) Under the agreement Ariel was to send the shipping documents to Alpha, but this was not done. Instead, Alpha received verbal instructions from Ariel who gave the name of the shipper (usually Consolidated) and a description of the cargo being shipped. Alpha prepared the bill of lading (usually Interlink) and the export declaration and would then aggregate the bill for their services which they sent to Consolidated on Ariel's instructions. The bill was paid by Consolidated. Consolidated lists its address as 140 Cedar Street, New York City, which really is the same location as 90 West Street. (FF 44) The shipments handled by Alpha were part of the shipments involved here which violated the Shipping Act.

3. Charles Klaus & Co.

In any understanding of the relationship of Ariel, Interlink and Merritt, and how they operated, it is necessary to consider the evidence in the record relating to the formation of Klaus and Joshua Dean. As to Klaus, the earlier proceeding did not disclose many facts. Merritt's testimony would lead one to believe that he knew little of Klaus. He stated he owned no stock in the company and that as to his wife's ownership, "It's my understanding that she has one share" . . . and further, "Mr. Yang of Charles Klaus asked Mary Anne to notarize some things for him . . . and therefore it was suggested that she could be shown as a shareholder and receive one share, which she was very proud to have offered to her. . . ." (Tr. 1 19th), pp. 12, 13) When asked directly if he owned any part of Klaus or had an ownership interest in it he answered, "No, I don't." (Tr. 1 (19th), p. 99) He stated further that he did not have a supervisory position with or draw a salary from Oasis or Javelin which are divisions of Klaus. Mr. Merritt also testified that he had never met a Mr. Yang, and that he was not involved in the initial dealings between Klaus and Ariel. (Tr. 1 (19th), p. 100)

At the hearing on remand the real facts about Klaus came to light. Beginning with the very name itself, Martyn Merritt has been involved intimately with the formation of Charles Klaus & Co. The name is a combination of the middle name of Peter Klaus Schauer, a former partner of Merritt, and Merritt's middle name, which is Charles. (FF 27) Not only that, as early as June 28, 1978, Merritt sent a letter to S.Y. Yang & Co., located in Hong Kong. The company is a Certified Public Accountant Firm. In his letter Mr. Merritt sends Yang a $500.00

retainer to incorporate Charles Klaus & Co. Ltd., spelling out its purposes. Not surprisingly the Directors were listed as Charlotte G.K. Ballerman(n) who was Klaus' mother and had nothing to do with the company and Mary Anne Pawlowski (Mrs. Merritt), who Mr. Merritt would have us believe was given a share of stock by Yang. In addition, Mary Anne Pawlowski was given authority to sign "Checques and Negotiable Instruments." The stockholders of Klaus & Co. were originally to be Klaus--1999 shares, Merritt--1999 shares, CGK Ballerman(n)--1 share and M.A. Pawlowski--1 share. Further, Ballerman was to be shown as Vice-President and Treasurer and Pawlowski as President and Secretary. (FF 24) After the exchange of several letters between Yang and Merritt, Merritt on October 4, 1978, directed Yang to issue his (Merritt's) shares and Schauer's shares to a company called Anglo-Bavarian Investments Ltd., a company with an address in the Grand Cayman Islands, B.W.I. (which country has confidentiality laws against disclosure of information (Ex. MMM; TA, p. 25)).

As if all of the above was not devious enough, the record indicates that the name, "Anglo-Bavarian," is another diminutive for Merritt and Schauer, the former being British, the latter, German. Further, both Merritt and Schauer were officers and directors of Anglo-Bavarian, which Klaus characterized as a "shell company set up in the British West Indies similar to, probably, the objectives and goals associated with the formation of Charles Klaus and Company in Hong Kong." (FF 28) The remainder of the record certainly supports that testimony. Schauer further testified that he and Merritt did not want to be "directly involved" with Charles Klaus & Co., because it could have constituted a conflict of interests with their other activities so they used the names

of Mrs. Ballerman and Mary Anne Pawlowski. Schauer stated he and Merritt followed the same procedure with other corporations. (FF 29) Schauer also testified as to Merritt's use of non-existent people, and that in prior dealings (Nautilus and Container Lloyd), Merritt, "skimmed" them "of considerable assets before and after both had ceased operations. (FF 31) He testified that as of September 1, 1980, both he and Merritt were directors of Klaus. (FF 34) Finally, Schauer testified that he parted company with Merritt in the later part of 1980. He then wrote Yang to remove his mother's name as a director of Klaus and was informed her letter of resignation had already been received and acted upon. He stated the letter was not sent or signed by his mother. (FF 31, 32)

Whether or not one believes any or all of Schauer's testimony, the documentary evidence alone directly refutes Merritt's testimony regarding his relationship with Charles Klaus & Co. He incorporated and orchestrated its operation and he did so in such a way as to deliberately and intentionally conceal the extent and degree of his participation. His conflicting testimony raises serious questions far transcending violations of the Shipping Act which will be discussed in a later portion of this decision.

4. Joshua Dean & Co. Ltd.

As in the case of Klaus & Co., the earlier record contained few facts regarding Dean. Merritt testified that he did not own any stock in Dean. (Tr. 1 (19th), p. 12) The latter record indicates that the company was incorporated in Great Britain on October 15, 1981. The incorporation documents were filed by two British citizens. Also, on

October 15, 1981, Martyn Merritt filed an official document wherein he stated the two British citizens had resigned as corporate officers and were replaced by Mr. Merritt as Secretary and Mary Anne Pawlowski (Mrs. Merritt) as Director. (FF 35) In a "Directors Report" for October 15, 1981 to April 30, 1983, it is stated that Dean began operating on April 1, 1982, as New Media Advertising, listing as directors Mr. A. Sethi, Mr. Merritt and Ms. A. Pawlowski. A balance sheet was filed and signed by Martyn Merritt. In a series of documents filed by Merritt it is shown that of the 1000 shares of stock issued by Dean, Charles Klaus & Co., owns 999 shares and Broadview Developments Ltd. of 90 West Street, New York City, owns 1 share. Klaus is described as the "ultimate holding company" on the corporate documents. (FF 36)

Here again, Dean is not an independent, unrelated company. Its formation, operation and relationship with Ariel, et al., Klaus, and Merritt is part of the broad picture whereby Merritt uses the various corporate entities involved to obscure his activities.

5. Consolidated Commodities of America Inc.

Consolidated, according to its letterhead, is involved in exporting, importing, trading, manufacturing and distribution. It was initially incorporated in New York State on April 6, 1977, under the name, Container Lloyd (New York) Inc. On November 3, 1982, Tilak Sharma filed a certificate of change designating himself as resident agent. Sharma also filed an amendment changing the corporate name to Consolidated. The corporation has the same office space and telephone number as Ariel.

Consolidated appears on many of the bills of lading involved in this proceeding as the "agent for the shipper." According to Merritt, this was done as a screen between the vessel operator and Interlink's true shipper customers, so that the vessel operator could not solicit Interlink's clients. Merritt characterizes Consolidated as a "non-entity" even though Consolidated has its own bank account and pays bills (to Alpha) in its own name, and even though he argues that, as to Interlink, these same characteristics demonstrate its independence from Ariel.

Also, it is interesting to note that with respect to four of the shipments carried by U.S. Lines which listed Consolidated as "agent for the shipper," U.S. Lines filed a complaint in United States District Court for the Southern District of New York alleging that Consolidated had violated the Shipping Act, 1916, by misdeclaring the nature of certain commodities. U.S. Lines received a default judgment against Consolidated for $16,018.36. (FF 55) No one appeared at the proceeding to argue that Consolidated was a "non-entity" as Merritt would have us believe in this proceeding.

Whatever may be Consolidated's true corporate character, there is no question that it was used by Merritt, Ariel and Interlink in the transactions which gave rise to violations of the Shipping Act. The clerks who were Interlink employees did not use Consolidated's name without direction on the bills of lading, and that direction had to come directly or indirectly from Martyn Merritt. The same is true regarding the payments made to Alpha. Someone decided that those fees should not be paid by Ariel, or Interlink, but rather by Consolidated. Again, we believe the decision was made by Merritt.

6. Merritt Enterprises Inc. d/b/a Cheerio International

Cheerio is the trade name of Merritt Enterprises. It was incorporated in Illinois in 1976 and moved to New York in 1981. Mary Anne Merritt is its President and Martyn Merritt is Vice-President. Mr. & Mrs. Merritt are listed as owning the company. (Ex. TA, p. 23; Tr. 1 (19th), pp. 97-98)

In its Order of Remand, the Commission asks if Cheerio's owners and officers knew that it was being used as "agent for shipper" in the Interlink shipments? The answer is that certainly Martyn Merritt knew. That knowledge is implicit in his assertion that the names Consolidated, Cheerio, and Liberty were used to shield the identity of the real shipper from the carrier. More importantly, when all of the facts of record are considered together it is clear that Cheerio was just one of the many names used by Merritt in his business dealings, and in this proceeding it was used in transactions that violated the Shipping Act.

7. Liberty Shipping International (Liberty)

As to Liberty the record was and remains sparse. Merritt testified that "my wife has some interest in that company" and as to his interest he states, "To be honest with you, I'm not sure, but I think I'm listed as a director." He stated that neither he nor his wife ran the company. (Tr. 2 (19th), pp. 98, 99)

The record indicates that there were two Liberty shipments where Interlink was listed as "agent for shipper" and where cargo was misdeclared. Once again, Liberty was used by Merritt as he saw fit. The testimony that he does not know the exact relationship of himself and

his wife to Liberty is not believable and the idea that Interlink's clerks simply happened to use the name without any direction is equally untenable. It its Order of Remand the Commission asks if there is any significance in the fact that Thomas Matthews, an Ariel employee, is the U.S. filing agent for Liberty? The record shows that Matthews is an employee of Ariel, and that he files tariffs not only for Liberty, but for all of the other filing companies involved in this proceeding, including Interlink. (Tr. 2 (19th), p. 159) This activity flies in the face of the argument that Ariel did not act as agent for Interlink. If Matthews was really filing for Ariel it is even more damaging to the respondents' case. In our view, the role played by Matthews in filing tariffs for the various corporations, including Liberty, is consistent with our holding that Merritt controlled what was taking place. Either directly or through Boudart and Sharma he was able to orchestrate what was done and Matthews, as an Ariel employee, did what he was told to do. It is significant that he was employed by Ariel rather than Interlink because it emphasizes that Ariel, with 48 employees and Merritt at its head, was the primary entity and not Interlink, with 2 clerks. Whatever the paperwork may have indicated, Merritt and Ariel were part and parcel of every transaction.

8. Oasis and Javelin

As we have found, Oasis and Javelin are "divisions" of Charles Klaus & Co. The discussion relating to Klaus applies equally here, and, as we have noted, the record is now clear that Merritt controls and owns Klaus through Anglo-Bavarian. We believe Schauer's testimony that Klaus is a corporation, used and controlled by Merritt and that Merritt

exercises that control with respect to particular shipments through Ariel in New York. The fact that his wife, Mary Anne, is the U.S. Agent for Oasis and Javelin further emphasizes the degree of Merritt's control. As to whether or not the use of Oasis and Javelin as "agent for shipper" in connection with the false transshipments was known to them, we can now see that Oasis and Javelin as well as the parent, Klaus, were not separate and independent entities. They were a part of the Ariel Maritime Group--under Martyn Merritt's control and supervision.

Issues

Before proceeding to a discussion of the issues in this proceeding it should be noted that the Reply Brief of the respondents is a compilation of some new matter contained in the first twenty-four pages and old submissions which comprise the remainder of the brief. The new matter which relates mostly to facts is dealt with below. The old matter is not based on the record on remand and was considered in our previous initial decision. However, we will comment where appropriate.

Despite all of the evidence to the contrary, the respondents continue to argue in their reply brief at page 6, "that M.C. Merritt was neither the incorporator nor a shareholder in Ariel Maritime Group," and defends Mrs. Merritt's filing of the incorporation papers as neither "illegal or nefarious." Of course, the question respondents avoid is why Mrs. Merritt filed the papers in the first place, and why she used her mother's name as President, and why the corporate minutes showed Mr. Mott as President, and why Martyn Merritt held himself out as

President. The answer is that Merritt controlled, and Merritt used the names as he saw fit. Also, Mr. Merritt attempts to minimize the fact that signature cards with a bank showed him as President of Ariel in 1981, by arguing that "the official corporate record book" shows Mr. Merritt . . . as being appointed a special consultant." Whatever may be the fact, one or the other is a false statement and the real significance of the facts is that Merritt felt free to call himself President at the bank which shows how much control he exercised. In the same way his ability to sign checks and withdrawals alone, without a counter-signature, is indicative of his degree of control and does have a factual bearing on the issues in this case. Merritt's arguments to the contrary are unavailing.

At page 14 of their reply brief the respondents argue that Ariel was not an "agent" of Interlink. They apparently base their argument on the fact that there was no written agency agreement between Ariel and Interlink. The facts of this record establish that Ariel did hold itself out as Interlink's agent. Given Merritt's degree of control of both companies and his use of them and their employees it makes little difference whether or not Ariel was an agent for Interlink. The same is true regarding Ariel's actions with Dart. Whether or not Ariel was an agent for Javelin or Oasis is not controlling. The fact is that Merritt signed the agreements and directed Ariel, Interlink, Klaus, Javelin and Oasis--all of whom took part in the violations of the Shipping Act.

At page 15 of their reply brief respondents argue that Merritt did not negotiate the agreement with Alpha stating that the testimony was too "vague and unspecific" to establish that fact. The testimony of both Petrocini and Daya is quite clear and, as we have found,

establishes that Merritt was the primary representative of the Ariel Maritime Group, which they believed included Interlink, Oasis, Javelin, Dean, Cheerio, Liberty and others.

Beginning at page 17 of the reply brief respondents argue that, "Mr. Merritt has never denied he was involved in the formation of Charles Klaus & Co., Ltd. but did so as a 50% shareholder of that corporation and never, in fact, held any stock physically and the ownership of the company was, shortly thereafter, transferred to other parties." This writer believes there can be no defense regarding the formation of Klaus. While Mr. Merritt may "never have denied" that he was involved in forming Klaus, his testimony in the earlier hearing never even hinted at that participation. Also, his letters to Yang and the use of a false set of names as officers and directors at his direction shows that he was part of the deception. As to the stock ownership, once again, the record shows that Merritt directed Yang to transfer the shares to Anglo-Bavarian. Mr. Schauer's testimony accurately describes the function of that corporation and we believe Merritt controls it. His statement that "other parties" (Anglo-Bavarian) own Klaus, <u>even at this late date</u>, shows a brazen disregard for the truth.

At page 19, the respondents argue about the identity of Joshua Dean & Co. In light of Merritt's failure to identify Dean in the earlier testimony, the difficulty in establishing its identity through third party sources is understandable. The present record clearly identifies Dean and, once again, establishes that Merritt controls it. His attempts to becloud the issue by arguing about whether or not there were two Deans is unavailing.

Beginning at page 20, the respondents attempt to again argue the separateness of Ariel, Interlink and Klaus, based on the technical adherence to what was shown on various documents, and on such factors as whether or not tariffs are filed with the Commission, Ariel's representation of Klaus as agents, etc. We have already held that Merritt controls and directs all of the corporations and that he and they all engaged in the prohibited conduct set forth in section 16, initial paragraph, Shipping Act, 1916. Further, Ariel was used by Merritt in whatever activity he thought appropriate, and those activities came under the purview of the Shipping Act.

At page 24, the respondents accuse the investigating agent of malicious conduct by advising companies not to do business with Ariel, etc. The record contains no evidence in support of such an assertion. As to reputation, given Merritt's previous associations with Container Lloyd, Nautilus and Eurobridge, as well as his dealings with Schauer, Alpha, Hohenstein, and U.S. Lines, it is submitted that Merritt's reputation was already in question and not because of the actions of the investigating agent.

Issue No. 1 - Violation of Section 16, Initial Paragraph

Section 16, Initial Paragraph, of the Shipping Act, 1916, provides:

> That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and wilfully, directly or indirectly by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

In this case it is clear that Interlink over a long period of time booked cargo with an underlying VOCC (carrier) under another name relating to 63 shipments of Dehumidifiers, Cellulose Film, Cigarette Paper, Loudspeakers and Stage Equipment. Consolidated was usually named in the shipper block as agent for the shipper although Dean was also named. In addition, Interlink booked 32 shipments of Cellulose Film, Cigarette Paper and Wearing Apparel with the carrier in its own name rather than using Consolidated or Dean. The carrier bill of lading in the above shipments contained a commodity description and/or measurement or weight which called for a particular freight charge computed by reference to the carrier's tariff which Interlink paid. A second bill of lading bearing Interlink's name and issued on its behalf was sent to the actual shipper. It would contain a different commodity description, and/or measurement or weight which invariably would result in higher freight costs being paid to Interlink, than what Interlink had paid to the underlying carrier. With respect to those shipments occurring before June 24, 1982, Interlink did not even have a tariff on file which would allow it to charge what was shown on its bill of lading. (Ex. W)

In addition to the section 16, Initial Paragraph, violation discussed above Interlink was involved in 24 containerload shipments relating to cigarette paper, dessert preparations and wearing apparel where the shipments were described as transshipments when in reality they were not transshipments. Attachment D to the Investigative Officer's report and the related exhibits indicate that Interlink by using Javelin and Oasis as shipper on the VOCC bill of lading, was able to have the cargo rated under the terms of the Connecting Carrier Agreements of Javelin and Oasis with Dart, an NVOCC, as well as with

Trans Freight Lines, Inc. (TFL). Even though such cargo was destined for Europe or the United Kingdom the cargo was declared as a transshipment to other destinations with the result that Interlink ended up paying the lower transshipment rate, rather than the rate actually applicable for the shipment to Europe or the United Kingdom.

A reading of the respondents' brief contains nothing by way of facts or argument indicating that the transshipments listed in the Investigating Officer's report did not occur. Instead respondents seek to minimize their effect stating:

> Certain shipments in these proceedings related to "transshipments" in some cases resulted in mistakes whereby a lump sum charge was applied instead of the applicable commodity rate. These mistakes were caused by operational factors, and it is clear that they were not intentional when it is considered that errors were found only in a handful of shipments, when in fact several hundred shipments were handled by respondents.

In addition to all of the above the Investigating Officer listed shipments where Javelin, Oasis and Liberty bills of lading were issued for cargo which was misdeclared to the underlying VOCC. Consolidated, Cheerio, Dean and Interlink were listed as agents for the shipper. The cargo involved was Mining Machinery, Automatic Teller Machines, Poultry Equipment and Cellulose Film.

As to the law involved on this issue Hearing Counsel cites Louisville & Nashville Railroad Company v. Maxwell, 237 U.S. 94 (1915), and Ocean Freight Consultants, Inc. v. The Bank Line Limited, 9 F.M.C. 211, 214-15 (1960), for the proposition that "Deviation from tariff requirements is not allowed"; that "the only rate the carrier can lawfully charge is the cellulose film rate," despite any "oral advice from the carrier's employees." Further, he cites these cases in support

of the argument that "The respondents have a duty to find out about the proper rate." As to willfulness Hearing Counsel cites Rates from Japan to United States, 2 U.S.M.C. 426, 434-5 (1940); U.S. & Illinois Cent. R. Co., 303 U.S. 239 (1938) and a series of Commission cases in support of the view that "parties have an obligation under section 16, Shipping Act 1916 to exercise diligence in regard to the requirements of the Shipping Act and a failure to exercise such diligence results in a knowing and wilful violation." He cites In Re: Rubin, Rubin & Rubin Corp., 6 F.M.B. 235, 239 (1961), noting that "when a shipper chooses an improper description by ignoring a more descriptive classification and knows of a variance between what is being shipped and what is being described such shipper knowingly and wilfully obtains transportation by water at less than applicable rates." Hearing Counsel also cites Equality Plastics, 17 F.M.C. 217, 226 (1973), which defines the term "plainly indifferent" in the context of a knowing and willful violation as meaning "more than usual indifference, and equates with a wanton disregard from which an inference can be drawn that the conduct was in fact purposeful." Finally, Hearing Counsel cites Eurotropic Corp., Docket No. 80-62, served September 11, 1981, 20 SRR 599, 1604, for the view that a knowing and willful violation "requires a finding of wanton disregard and of purposefulness which the Commission equates with gross negligence in tort cases."

In opposition the respondents cite European Trade Specialists v. Prudential Grace Lines, 19 SRR 59 (1979), to support their argument that given the evidence contained in the record regarding cellulose acetate vis-a-vis cellulose film, "oral testimony and dictionary definitions are sufficient in establishing the nature of the goods shipped." Further,

they argue that, "it is also well-settled that when these two terms are both included in a carrier's tariff, the shipper is entitled to the lower rate"--"if indeed both of the tariff descriptions in question (viz. 'cellulose acetate' v. 'cellulose film') in this proceeding are adequately descriptive," citing Corn Products v. Hamburg-Amerika Lines, 10 F.M.C. 388, 393 (1967), and Misclassification--Diatomaceous Earth as Silica, 6 F.M.C. 289, 296 (1981). The respondents use the same basic argument respecting "wrapping paper" v. "cigarette paper," adding the statement that, "at the time of shipment, the paper shipped was not yet in a form wherein it could be described as exclusively for use in wrapping cigarettes, but at that time had a broader use as 'wrapping paper.'"

We hold that on the basis of this record, Ariel, Interlink, Consolidated, Oasis, Javelin, Cheerio, Liberty and Dean knowingly and willfully obtained or attempted to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable. Interlink, at Merritt's direction, was responsible over a long period of time, for a deliberate and repetitious course of action where it paid a carrier one rate, and then, for the same cargo charged a shipper a much higher rate. There is no dispute as to that basic fact. The respondents' arguments regarding the proper description for cellulose acetate or wrapping paper as well as those which point to "isolated errors" or to "operational factors" are unconvincing and unavailing, not only because they are self-serving and largely uncorroborated, but because it is inconceivable that Interlink did not know, or should not have know, that it was paying one rate under one commodity description and charging another for the same cargo under another description. We

believe listing a commodity as cellulose acetate on the carrier bill of lading when in fact the carrier's tariff contained a higher rate for cellulose film, and then using cellulose film on a second Interlink bill of lading was a deliberate and intentional misrepresentation especially when Interlink had no tariff on file initially regarding the commodity. Whether other parties such as Alpha or Hohenstein or Rogers and Brown were involved or not, Interlink's actions when coupled with the use of Consolidated, Cheerio, Liberty, and with Ariel, Dean, Javelin and Oasis, paint a clear picture of a deliberate scheme to obtain transportation at less than the tariff rates and we so hold. Whoever else the other parties may have been Interlink was always involved and always benefited. Any holding that its enrichment was through inadvertent error or due to complicated operational factors would be improper and erroneous, especially in view of the overwhelming weight of evidence in the record that establishes beyond any doubt that Merritt sought to obscure his and the corporate activities from the beginning. He began by intending to violate the law and he ended up doing it through Interlink and the other corporations. We hold that Ariel, Interlink, Oasis, Javelin, Consolidated, Cheerio, Liberty and Dean have all violated section 16, Initial Paragraph, Shipping Act, 1916. They were all controlled and operated by Merritt.

Inherent in our holding is the finding that Hearing Counsel has met its burden of proof regarding the violation of section 16, Initial Paragraph, insofar as Ariel, Interlink, Consolidated, Oasis, Javelin, Cheerio, Liberty and Dean are concerned. As we have noted, the record, as reflected in the foregoing findings of fact and discussion, contains ample evidence to indicate beyond any doubt that the companies mentioned

above violated the Shipping Act and were owned and/or controlled by Martyn Merritt.

With respect to willfullness, we believe the consistent pattern of misdeclarations indicates a deliberate course of conduct devised to conceal and mislead. This is buttressed by the fact that the nature of the violations involved erroneous bills of lading for the same shipments which resulted in Interlink receiving a lower rate from the VOCC than it charged the shipper. Merritt, Ariel and Interlink, as well as Consolidated, Oasis, Cheerio, Javelin, Liberty and Dean, knew or should have known what was taking place. Indeed, it is beyond understanding that their books would not reflect what was happening over the time period involved. This is especially true since the record indicates there was some question regarding the cellulose film and cigarette paper, yet no correlation of the bills of lading or the costs to the shipper and Interlink was made at any time during the period the shipments took place. The failure to make such correlation, if indeed that was the fact, itself amounts to gross negligence or worse.

The respondents urge that this case falls within the ambit of Eurotropic Corp. Violations of Section 16 Initial Paragraph, Shipping Act, 1916, 20 SRR 1599 (1981), noting that "'knowingly and willfully,' requires more than casual indifference or inadvertence." They state further that, "In this instance, Interlink continuously sought to inform itself of the proper commodity classification for these shipments, so that it cannot be concluded that it was, 'plainly indifferent,' to its requirements under the statute. Misclassification of Tissue Paper as Newsprint Paper, 4 F.M.B. 483 (1954)." We simply disagree with respondents' analysis. As we have noted, insofar as Interlink "informing

itself," there is some self-serving evidence that some carrier representatives agreed that the "cellulose acetate" and "industrial wrapping paper" descriptions should be used. No corroborative testimony was forthcoming nor was any satisfactory explanation given as to why Interlink did not "inform itself" of the discrepancy between its bill of lading and the VOCC bill of lading. Further, the facts show that Interlink began charging the higher rate at a time when the commodity was not even on file in an Interlink tariff. Finally, as to the transshipment misdeclarations, the question again was not one of description. Instead, the record discloses deliberate misstatements of fact, e.g., that the cargo was being transshipped. Not only that, once again, Interlink collected a higher freight rate from the shipper based on a bill of lading that conflicted with the bill of lading used to pay the VOCC.

We think the section 16 violation here falls within the purview of United States v. Illinois Central Railroad Co., 303 U.S. 239 (1938), where the Supreme Court stated:

> In statutes denouncing offences involving turpitude, "willfully" is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong, the word is often used without such implication . . . [So, giving effect to these considerations, we are persuaded that it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements] (Portion in brackets from St. Louis & S.F.R. Co. v. United States, 169 Fed. 69, cited by Court.) 3/

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[3] See also Capital Transp. Inc. v. United States, 612 F.2d 1312, 1323 (1979); Misclassification of Tissue Paper as Newsprint Paper, 4 F.M.B. 483, 486 (1954); Markt & Hammacher--Misclassification of Glassware, 5 F.M.B. 590, 511 (1958).

The violation is similar to that which occurred in In Re: Rubin, Rubin & Rubin Corp., et al., supra, where the Board stated:

> We have also held that where a shipper has doubt as to the proper tariff designation of his commodity, he has a duty to make diligent and good faith inquiry of the consistent failure to inform one's self by means of normal business resources might mean a shipper or forwarder was acting knowingly and willfully. Indifference on the part of shippers is tantamount to outright and active violation and diligent inquiry must be exercised by shippers and by forwarders.

So, here, we believe Ariel and Interlink, with the assistance of Consolidated, Oasis, Javelin, Cheerio, Liberty and Dean, willfully violated section 16, Initial Paragraph. Not only do we believe they were grossly negligent or intentionally disregarded the statute or were plainly indifferent to its requirements, it is our view their actions constituted a deliberate scheme whose purpose was to violate section 16.

Issue No. 2 - Violation of Section 18(b)(3)

Section 18(b)(3) of the Shipping Act, 1916, provides:

> No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time.

In his report the Investigating Agent found that from November 19, 1981, through June 11, 1982, Interlink violated section 18(b)(3) by failing to charge the rates specified in its tariff for shipments of Dehumidifiers, Dessert Preparations, Cellulose Film, Cigarette Paper, Wearing Apparel, T Shirts and Loudspeakers. (TA, Attachment C) Under

the heading, "section 18(b)(3) violations were not intentional," the respondents state that:

> Allegations by the Bureau of Hearing Counsel that Interlink intentionally failed to file rates for various shipments is not substantiated by the record. What emerges from the facts is that the rates were either on file, were effective shortly after some shipments were accomplished, or were applied by mistake with slight variances. There is no clear pattern of willful tariff violations.

In addition, attachments affixed to the respondents' brief indicate that they argue that in approximately 20 shipments involving cellulose acetate there was no misdeclared weight or measurement or it is insignificant because of minimum rate rules.

We hold that it is clear from the record made in this case that even assuming, arguendo, that some cellulose acetate shipments were not misdeclared or that minimum weight rules applied, Interlink charged customers a rate as per the Interlink bill of lading or invoice, which was not the rate shown in the Interlink tariff. Further, whether or not it was willful is not determinative of whether or not a violation occurred since section 18(b)(3) does not require a finding of willfullness. Ocean Freight Consultants Inc. v. The Bank Line Ltd., 9 F.M.C. 211, 214, 215 (1966); Sun Co. v. Lykes Bros., 20 F.M.C. 68, 70 n. 8 (1977); and Sanrio Company Ltd. v. Maersk Line, 19 SRR 1627, 1655-1656 (adopted by Commission 20 SRR 375 (1980)). It suffices that Interlink did not charge rates in accordance with its tariff. Since it engaged in such activity it has violated section 18(b)(3), Shipping Act, 1916. We would add that even if a showing of willfullness was required the record here would support such a burden.

Issue No. 3 - Penalties for Violations of Section 16, Initial Paragraph, and Section 18(b)(3), Respectively

Under the Shipping Act, 1916, the Commission's regulations (46 CFR 505.1 (1983)) referred to another regulation by stating:

> [F]or the purpose of this part, the criteria for compromise, settlement, or assessment may include but need not be limited to those which are set forth in 4 CFR Part 101-105.

The regulation (4 CFR Part 101-105) implements the Federal Claims Collection Act of 1966. The criteria set forth in the regulation (Part 103) include deterrence, cost of collecting claims, litigative possibilities, inability to pay, and aid to enforcement and to compel compliance. The regulation distinguishes between "accidental or technical violations" which "may be dealt with less severely" as opposed to "willful and substantial violations" (46 CFR 103.5). The current law respecting the factors to be considered in fixing penalties is section 13(c) of the Shipping Act, 1984 (46 U.S.C. app. sec. 1712(c)). It is much like the criteria under the 1916 Act and states:

> In determining the amount of the penalty, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require.

The Commission regulation issued under the above law tracks the statutory language but adds a criteria based on "deterrence and future compliance with the Commission's rules and regulations and the applicable statutes."

It is clear from the cases decided by the Commission that the imposition of penalties is "not an exact science," Midland Pacific

Shipping Co., Inc., etc., 21 SRR 181, 183 (1983), at 22 SRR 184 of Commission's statement, and that the Commission takes into account the circumstances of each case, Certified Corp. and Seaway Distribution Corp., etc., 21 SRR 468, 470 (1982).

Here, we believe the violations of section 16 and 18(b)(3) were not only repetitive, stretching out over a long period of time, but, as we have found, were part of a scheme involving false statements and attempts to confuse and hide what was actually transpiring. Not only that, contrary to respondent's allegations, there was a complete lack of cooperation on the part of Merritt, and the corporations involved once the investigation began. At the outset, Merritt refused to even identify the nature and ownership of the corporations asserting that the information was confidential. After the case began, Merritt put Hearing Counsel to its proof, which, of course, was his prerogative. However, in the second hearing, when the burden of proof had clearly been met and where the relationship of Ariel, Interlink, Klaus, Dean and the other corporations had come to light, he steadfastly defended the objectionable activity even in the face of the false statements. He did not offer one witness at the second hearing. An example of Merritt's actions involves Mr. Sethi who supposedly represented ASA and who later was shown to be working for an Ariel subsidiary in England. Mr. Sethi could probably have answered many questions, and the investigating agent sent a letter to him which remains unanswered. Mr. Merritt, neither as counsel or as respondent, presented Sethi as a witness. Instead, Merritt noted that Sethi was out of the country and that if the agent had let him know he would have arranged a contact. This, despite the fact that Sethi has never deigned to answer the agent's letter.

More important than Merritt's lack of cooperation, which caused an expensive third-party investigation involving over 400 manhours, is the nature of the offenses themselves and the part Merritt played in orchestrating the incorporation, operation and interrelation of the entities involved. The facts relating to the use of Mott and Pawlowski and their alleged association with Ariel, the filing of Articles of Incorporation in Illinois, the statements filed with the bank in Chicago, the incorporation of Klaus and Dean, may all involve a criminal violation of Title 18 USC, section 1001. The section reads:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

The above section not only makes it a crime to make false statements, but it also reaches those who aid and abet the making of such statements.

In this proceeding we do not recommend any action for violation of section 1001 as to any of the parties or witnesses who are involved. We have referred to the section to advise the Commission that it may well be applicable and, for the respondents' benefit, to place the penalties set forth below in proper perspective. It is hoped that the reference to section 1001 will serve to emphasize the serious nature of the violations and the even more serious consequences of allowing what began as a violation of a civil statute to grow into a more grievous violation of a criminal statute. The penalties set forth below and the cease and

desist orders that will follow are stringent. They are meant to act as a deterrent and to encourage future compliance with the Commission's rules and regulations. Wherefore, we hold that penalties for violations of sections 16, Initial Paragraph, and section 18(b)(3) of the shipping Act, 1916, are assessed as follows:

Amount		
Under Section 16	Under Section 18(b)(3)	Party
	$50,000	Interlink
$150,000		Ariel and Interlink (jointly and severally)
50,000		Ariel and Consolidated (jointly and severally)
25,000		Ariel, Klaus and Javelin (jointly and severally)
25,000		Ariel, Klaus and Oasis (jointly and severally)
25,000		Oasis, Ariel and Joshua Dean (jointly and severally)
5,000		Ariel and Cheerio (jointly and severally)
5,000		Ariel and Liberty (jointly and severally)

Issue No. 4 - Whether the Commission has Authority to Issue Cease and Desist Orders Forbidding Violations of the Shipping Act of 1984 Based on Violations of the Shipping Act, 1916

Under the facts of record, the violations which occurred here took place while the Shipping Act, 1916, was in effect. They involve

violations of sections 16, initial paragraph, and section 18(b)(3). Both of these sections have been carried forward to the 1984 Act, essentially unchanged as sections 10(a)(1) and 10(b)(1) respectively.

We think it clear that the mere intervention of the enactment of a new statute between the time a violation occurs under an existing statute and the time a cease and desist order might issue, does not preclude the issuance of a cease and desist order regarding the violation of the new statute. As Hearing Counsel notes in his brief, in Marcella Shipping Company Ltd., 23 SRR 857, 871-2 (1986), the Commission held that a cease and desist order could be based on conduct engaged in by a respondent prior to the passage of the Shipping Act of 1984, and ordered the respondent to cease and desist from violating sections 8(a)(1) and 10(b)(1) of the 1984 Act as a result of its violation of sections 18(b)(1) and 18(b)(3), the comparable provisions of the Shipping Act, 1916. The Commission followed the same course in Cari-Cargo International, Inc., Jorge Villena and Sea Trade Shipping, 23 SRR 1007, 1021-1 (1986). In our view, the criteria that must be used in determining whether or not a cease and desist order can be issued as to one statute for violation of an earlier statute, is whether or not the standards imposed by the application of the new legislation would result in any injustice to the respondents. Bradley v. Richmond School Board, 416 U.S. 696 (1974) (See General Counsel's Notice dated May 15, 1984, entitled "Application of Shipping Act of 1984 to Formal Proceedings Pending Before Federal Maritime Commission on June 18, 1984," and the reasoning contained therein). Such an injustice would result if the cease and desist order under the new Act would prohibit conduct which would not be prohibited for a violation of the earlier

Act. Here, the violations under the 1916 Act are identical to those under the 1984 Act, and any cease and desist order relating to such violations would be appropriate.

As to the respondents' argument which asserts that there is no basis for a cease and desist order under the Shipping Act of 1984 (page 24, et seq.), it is based on the premise that there is no evidence of violation of the 1984 Act. We reject that premise and adopt the reasoning and conclusions set forth above.

Issue No. 5 - Whether or Not a Cease and Desist Order Can be Issued Against an Individual Even if No Findings of Violations of Law are Made Against Him

Section 23 of the Shipping Act of 1916 and section 14 of the Shipping Act of 1984 empower the Commission to issue orders, after hearing. Under these statutory provisions cease and desist orders have been issued by the Commission. Agreement 7700--Establishment of a Rate Structure, 10 F.M.C. 61, 67 (1966), citing 314 F.2d 928, Pittston Stevedoring Corp. v. New Haven Terminal, Inc., 13 F.M.C. 33, 44 (1969), and Marcella and Cari-Cargo, supra. See also Federal Trade Commission v. Ruberoid Co., 343 U.S. 470, 473 (1952). As to whether or not the cease and desist order may be issued against an individual even if no findings of violations of law are made against him, the courts look to whether or not a cease and desist order will be effective if individuals are not included in the order. Federal Trade Commission v. Standard Education Society, 302 U.S. 112, 119-120 (1937). The court's language can be applied to this case. It said:

> Since circumstances, disclosed by the Commission's findings and the testimony, are such that further efforts of these

> individual respondents to evade orders of the Commission might be anticipated, it was proper for the Commission to include them in its cease and desist order.
>
> The record in this case discloses closely held corporations owned, dominated and managed by these three individual respondents. In this management these three respondents acted with practically the same freedom as though no corporation had existed. So far as corporate action was concerned, these three were the actors. Under the circumstances of this proceeding, the Commission was justified in reaching the conclusion that it was necessary to include these respondents . . . in each part of its order if it was to be fully effective in preventing the unfair competitive practices which the Commission had found to exist.

In Bruhns Freezer Meats v. United States Department of Agriculture, 438 F.2d 1322, 1343 (CCA, 8th, 1971), in a case where freezer plant operators had engaged in practices violating the Packers and Stockyards Act, the court stated:

> Clearly, an order limited in its application only to the corporate petitioners probably would prove futile as the corporations could be dissolved and the individual petitioners could then, under the cloak of new corporations, engage in the proscribed activities and thereby frustrate the purposes of the Act.

See also Surf Sales Company v. Federal Trade Commission, 259 F.2d 744, 747 (CCA, 7th, 1958), where the court found a manager of a business could be included in a cease and desist order regardless of his title, as long as he exercised "authority, responsibility, and direction of the affairs of the company."

In the instant case, Martyn Merritt dominates and controls the multiple corporations involved, and used them to violate the Shipping Act, 1916, and to avoid detection. While Sharma and Boudart were not the final authority they also took part in the violations under Merritt's direction and may, along with Merritt, also be included in a

cease and desist order. We agree with Hearing Counsel that Merritt "should not be allowed to evade the issuance of a cease and desist order due to the fact he was always careful to act under cover of a corporation." The same is true, although to a lesser degree, regarding Sharma and Boudart.

In view of the above, Ariel, Consolidated, Interlink, Klaus, Oasis, Javelin, Cheerio, Liberty and Dean are all ordered to cease and desist from violating sections 10(a)(1) and 10(b)(1), respectively, of the Shipping Act, 1984. Further, such corporations shall within 90 days of the Commission's final action in this proceeding furnish the Commission with a current list of all officers and directors, their names, addresses and telephone numbers, and whether or not they are employed by any or all of the corporations and in what capacity. Such corporations shall file profit and loss statements for the calendar year 1987 and shall also precisely describe what functions they perform regarding any matters falling within the purview of the Shipping Act of 1984. Such corporations shall identify any corporate relationships existing amongst themselves and shall set forth the date and amount of any exchanges of money totalling more than $5,000.00 in the form of checks or currency or any other mode of exchange passing between the corporations themselves and the corporations and Martyn Merritt, Tilak Sharma, Ray Boudart or any designee, agent, or representative of the above corporations or individuals.

Martyn Merritt, Tilak Sharma and Ray Boudart are ordered to cease and desist from taking part, either individually or in concert with any of the above-named corporations, in violations of section 10(a)(1) and 10(b)(1) of the Shipping Act, 1984. They are specifically further

ordered to cease and desist from using any of the above-named corporations as "shells," or the names of any such corporations in any transactions that violate the Shipping Act.

Issue No. 6 - Whether Separate Incorporations Can and Should be Pierced in the Imposition of Sanctions

The holding in this case does not require the piercing of any of the corporate veils. The facts indicate and we have held that all of the corporations engaged in prohibited conduct under the supervision and control of Martyn Merritt. Mr. Merritt, at least as to Ariel, Interlink, Consolidated, Klaus, Javelin, Oasis and Dean, stresses the validity of each as a separate viable entity even though he argues Consolidated, Cheerio and Liberty were just names that were used. This decision does not go behind their identities as corporations, but rather holds that as corporations they all took part in the violations of the Shipping Act under Merritt's direction and all are subject to penalties.

Despite the above, the evidence of record in this proceeding is replete with facts that indicate that little or no attention was paid to either the technical or substantive requirements of corporate activity. As we have noted, some of the corporations were born with falsified articles of incorporation and worse, their activities and employees were so intertwined that separate corporate activities were difficult to identify, much less justify. Further, Merritt's interests were so pervasive and predominant as opposed to the interests of the corporations that it would be permissible to disregard the corporate entities.

We believe the case law cited in West's Federal Practice Digest 3rd, Corporations Vol. 21, Section 1.4, and the language in Bruhn's Freezer Meats v. United States Department of Agriculture, at 438 F.2d 1332, 1343 (8th CCA, 1971), is pertinent here. The court said:

The law is well settled that the "corporate entity" may be disregarded when the failure to do so would enable the corporate device to be used to circumvent a statute.

Joseph N. Ingolia
Administrative Law Judge

Washington, D.C.
February 13, 1987

FEDERAL MARITIME COMMISSION

DOCKET NO. 84-38

ARIEL MARITIME GROUP, INC., ET AL.

ORDER ADOPTING IN PART, REVERSING IN PART, AND SUPPLEMENTING INITIAL DECISION

This proceeding is before the Commission on Exceptions to the Supplemental Initial Decision ("Supp. I.D.") of Administrative Law Judge Joseph N. Ingolia ("Presiding Officer").

The Supp. I.D. was issued following a Commission order remanding the proceeding to the Presiding Officer. The Supp. I.D. finds a substantial pattern of violations of section 16, Initial Paragraph and section 18(b)(3) of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. §§ 815, Initial Paragraph and 817(b)(3), committed by and through the corporations established, controlled and operated by the individual respondents herein. The Supp. I.D. further determines that these violations were extensive in scope and involved substantial sums of money and were a deliberate scheme to conceal what was being done. The Supp. I.D. assesses civil penalties against the various corporate respondents totaling $335,000 and orders the individual as well as the corporate respondents to cease and desist from violating sections 10(a)(1) and 10(b)(1) of the Shipping Act, 1984 ("1984 Act"), 46 U.S.C. app. §§ 1709(a)(1) and

1709(b)(1). Exceptions to the Supp. I.D. were filed by Martyn Merritt ("Merritt") on behalf of himself and six corporate respondents and by counsel for individual respondents Tilak Sharma and Raymond Boudart. The Commission's Bureau of Hearing Counsel has filed a Reply to the Exceptions.

BACKGROUND

This proceeding was initiated by an Order of Investigation and Hearing served on December 14, 1984 ("Hearing Order"). The Hearing Order stated that Ariel Maritime Group, Inc. ("Ariel") and others had engaged in activities apparently designed to obtain transportation at less than the rates required by law during the period from September, 1981 through October, 1983. Ariel is an agent for a number of vessel operating common carriers ("VOCCs") and non-vessel operating common carriers ("NVOCCs"). The Hearing Order named as respondents: Ariel; Interlink Systems Incorporated d/b/a Interlink Lines ("Interlink"); Consolidated Commodities of America, Inc. ("Consolidated"); Merritt Enterprises, Inc. d/b/a Cheerio International ("Cheerio"); Liberty Shipping International d/b/a Liberty Lines ("Liberty"); Oasis Express Lines, a division of Charles Klaus & Co., Ltd. ("Oasis"); Javelin Lines, a division of Charles Klaus & Co. ("Javelin"); and Joshua Dean & Co. ("Dean"). The Hearing Order also named certain individuals who appeared to be owners or operating officers

of some of the corporate respondents - Martyn C. Merritt, Tilak Sharma and Raymond Boudart.[1]

As the Commission noted in its Hearing Order, an NVOCC normally makes its contribution to and its profit from the chain of ocean shipping transactions by consolidating several small shipments into a containerload shipment for movement by a VOCC at a single commodity or freight-all-kinds containerload rate. Contrary to this accepted mode of operation, the Commission also noted, the shipments made by Ariel and Interlink appeared to have originated as full containerload, single commodity shipments, mainly of cellulose film and cigarette paper, which were apparently misdescribed to the VOCCs as cellulose acetate and industrial wrapping paper in order to secure the lower rates applicable to those commodities.

The Hearing Order charged that numerous violations of

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[1] All of the respondents were represented by counsel during the first stage of the proceeding, prior to remand. Following remand, no appearance was entered on behalf of Interlink or Dean. All other respondents were represented by Martyn Merritt, who continues to represent himself and the corporate respondents other than Interlink and Dean. Individual respondents Tilak Sharma and Raymond Boudart are represented on Exceptions by their own legal counsel.

section 16, Initial Paragraph and section 18(b)(3)[2] of the 1916 Act had been committed by the corporate and individual respondents.[3] The Presiding Officer has held two hearings on this matter - the first in 1985, followed by an Initial Decision ("I.D.") in which he found violations by some of the corporate respondents, but found the existing record inadequate to fully trace the violations to the parties responsible. The Commission, on Exceptions by the parties, found that the record of the transactions appeared adequate but remanded the proceeding for the taking of additional evidence relating to the relations among the responsible corporate and individual respondents. A second hearing was held for that purpose, and the Presiding Officer's Supplemental Initial Decision based on the substantial

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[2] Section 16, Initial Paragraph, provides:

> That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing or false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

Section 18(b)(3) provides, in relevant part, that:

> No common carrier by water in foreign commerce . . . shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property . . . than the rates or charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time; . . . .

[3] Based upon the period of violations alleged, the investigation was conducted under the 1916 Act rather than the 1984 Act.

record resulting from both hearings is now before the Commission on Exceptions filed by the Respondents.

A. The First Hearing and Initial Decision.

At the first hearing, in April, 1985, testimony was given by Commission District Investigator ("D.I.") James Mingione, respondent Martyn Merritt and Thomas Matthews, an employee of Ariel. A considerable documentary record was also placed into evidence, including pertinent bills of lading, bank and corporate records.

Evidence was adduced which showed that Ariel was an agent for various VOCCs and NVOCCs. Ariel was the agent for Transafrica Line, Javelin, Oasis, Buccaneer Line and Union Exportadora Line, all divisions of Klaus, under an agency agreement with Klaus dated September 8, 1980. Ariel has some 48 employees at its New York Office.

The ownership of Ariel in 1981 was shown to be:

Shareholder	No. of Shares
J.A. Mott	200
Tilak Raj Sharma	120
Raymond Boudart	120
Roy Brooks	200
ASA Development Co.	1360

ASA Development Company ("ASA"), the apparent majority owner of Ariel, was said to be owned by various individuals in the United Kingdom and elsewhere. Martyn Merritt testified that he had no ownership interest in ASA. Merritt testified that ASA's interest in Ariel had been represented at Board of Directors meetings by A. Sethi, the owner's representative, who was a resident of England.

Mott, Boudart, Brooks and Sharma were four of the six directors of Ariel and were also, in 1982, shown as President, Vice-President, Secretary and Treasurer, respectively, of the company, along with Mary Ann Merritt, who was Assistant Secretary. Mary Ann Merritt is the wife of Martyn Merritt. Martyn Merritt's testimony indicated that he became President of Ariel in 1983, at the same time that he purchased the 200 shares of stock belonging to Roy Brooks. Prior to 1983, during the period of most of the alleged violations, Merritt testified that he was associated with Ariel only as a "special consultant."

Interlink was shown to be operating as an NVOCC from the United States to Europe. Interlink had its own operation in New York, but was represented by agents in other U.S. cities. In a number of instances, Interlink's agents in particular cities were also sub-agents for Ariel.

Martyn Merritt, Mary Ann Merritt, Sharma and Boudart have been directors of Interlink since its incorporation, and are also its Vice President, Treasurer, President and Secretary/Assistant Secretary, respectively. Martyn Merritt owns 10 percent of the stock, Sharma and Boudart 6 percent each, with the remaining stock said to be owned by various individuals in the U.S. and Europe.

Ariel and Interlink share office space in New York. Although Interlink maintains separate bank accounts and issues its own invoices and statements, it has only two employees who are paid by Ariel, which provides other services for which it also bills Interlink.

Consolidated, initially incorporated in New York State in 1977 under the name Container Lloyd (New York) Inc., is in the business of "exporting, importing, trading, manufacturing and distribution." The corporation's name was changed in 1980 by a certificate of change filed by Sharma, who also filed a certificate as Resident Agent. Consolidated was shown to have the same office address and phone number as Ariel.

Merritt's testimony with regard to Consolidated was that Consolidated's name appeared as "agent for shipper" on the VOCCs' bills of lading prepared by Interlink in order to prevent the VOCCs from soliciting the business of Interlink's shipper customers. Consolidated was otherwise characterized as a "nonentity" which transacted no business.

Cheerio is owned by Martyn and Mary Ann Merritt, its President and Vice President, respectively.

Dean was shown to be a corporation registered in the Grand Cayman Islands. Due to local statutes protecting business information, little information on Dean could be obtained by D.I. Mingione. Dean, however, was listed as the owner of all but one of the outstanding shares of stock in Klaus.[4]

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[4] The remaining share of stock in Klaus was said to be owned by Mary Ann Pawlowski, whose married name is Mary Ann Merritt. Martyn Merritt testified that he owned no stock in Klaus or its operating divisions, Oasis or Javelin.

Mingione's testimony, as well as the enforcement report he prepared, exhibits and supporting documents, showed that some 95 shipments were made by Interlink on which the cargo was misdeclared to the underlying carrier as to commodity, weight or measurement. Some 63 of these shipments were shipped under the name of Consolidated or Dean. On all of these shipments, there were two bills of lading. The underlying carrier bill of lading generally listed Consolidated in the shipper block, and Alpha International Forwarding ("Alpha") as forwarder. The commodity was described as "cellulose acetate." A second, Interlink bill of lading identified the actual shipper (e.g. Olin Corporation ("Olin")), the actual shipper's freight forwarder (e.g. Rogers & Brown Custom Brokers, Inc. of Savannah), and reflected the commodity as "Cellulose, Film, First Quality." The weight or measurement reflected on the two bills of lading frequently differed. The amount paid to the underlying carrier for "cellulose acetate" was considerably less than the amount which would have been charged for Cellulose, Film, First Quality. The underlying documentation for these shipments included packing lists provided by the actual shipper which reflected commodity descriptions, weights or measurements conforming to the Interlink bills of lading, which differed from the underlying carrier bills of lading.

The evidence showed some seven additional shipments misdeclared in a similar manner, through the use of two

bills of lading reflecting misdeclarations of commodity, weight or measurement to the underlying carrier, on which the NVOCC bill of lading issued in the name of Javelin, Oasis or Liberty reflected Ariel as "agent," with Consolidated, Cheerio, Dean or Interlink shown as shipper on the underlying carrier bill of lading.

The evidence also indicated that some 24 shipments were falsely made as transshipments during the two-year period, September, 1981 to October, 1983, by listing Javelin or Oasis as the shipper on the underlying carrier bill of lading, on which the cargo was charged a lump sum rate pursuant to connecting carrier agreements between the underlying carrier and Javelin and Oasis. The corresponding Interlink bills of lading showed, however, that the cargo was never intended for transshipment beyond the European destinations of the underlying carriers. These false transshipments and other misdeclarations to United States Lines, Trans-Freight Lines ("TFL"), Dart Containerline, Ltd. ("Dart"), and Sea-Land Service, Inc. resulted in freight savings to Interlink totaling $142,915.

The record also indicated that Interlink had made some 62 shipments as an NVOCC on which the rates charged were not reflected in its tariff, during the period from November, 1981 through May, 1982.

In his Initial Decision served on June 12, 1985, the Presiding Officer found that Interlink had committed extensive violations of section 16, Initial Paragraph, and

section 18(b)(3), and that Consolidated, Cheerio and Liberty had also violated section 16, Initial Paragraph. He assessed substantial civil penalties for those violations. The I.D. concluded that the record was insufficient to support findings of violations by Klaus, Oasis, Javelin, Ariel or the individual respondents. The Presiding Officer noted that the record was adequate to establish that the 1916 Act had been violated, but that numerous questions as to who among the many corporate and individual respondents was responsible for the violations remained unanswered. He therefore found no basis upon which to issue a cease and desist order.

B. Order of Remand

On Exceptions to the I.D., the Commission reviewed the evidence and the findings of the Presiding Officer in an Order Remanding Proceeding, served December 16, 1985. That Order summarized the transactions involved, including each of the three schemes by which transportation was obtained at less than applicable charges by Interlink, as well as the instances in which Interlink had charged rates not filed in its tariff. Noting that, in each instance, an Interlink bill of lading, which reflected the correct description, weight and measure, was issued to the actual shipper, the Commission described each of these schemes. In the first, the cargo would be booked with an underlying VOCC whose bill of lading would not, however, show that Interlink was the shipper. Instead, Consolidated was shown as "agent for

shipper" on all but one shipment, on which Dean was used. The commodity description, weight and measurement, in various combinations, were misdeclared to the VOCCs, which resulted in transportation being obtained for substantially less than the lawfully applicable charges on shipments which were predominantly cellulose film and cigarette paper, but included dehumidifiers, loudspeakers and stage equipment as well.

The second scheme involved similar misdeclarations of commodity description, weight or measurement on shipments of cellulose film or cigarette paper, but the shipments were made in Interlink's name.

The third scheme involved the misrepresentation to VOCCs that cargo actually destined for Europe was to be transshipped to countries outside Europe on Oasis and Javelin, and therefore qualified for special lump sum rates under connecting carrier agreements which those carriers had with Dart and TFL. Interlink's own bill of lading issued to the actual shipper for each shipment showed that the cargo was actually destined for Europe.

Finally, the Commission noted the evidence, offered by D.I. Mingione, that Interlink had consistently charged rates over an extended period which were not reflected in its tariff on shipments of cigarette paper, cellulose film, loudspeakers, t-shirts, dessert preparations, wearing apparel and dehumidifiers.

Although the Commission determined that "the record has been developed adequately regarding the particular shipping transactions that gave rise to this investigation . . .", the Commission was unable "to conclude who properly should be held liable for any such violations" on the record then before it. Order of Remand, 2.

The Commission stated that it was "satisfied that the positions of the parties as to the legal significance of [the shipping documents introduced into the record by Hearing Counsel through the testimony of D.I. Mingione] have been adequately set forth in the record and analyzed by the Presiding Officer." The Commission, did not, however, reach the merits of those positions, but preserved them for resolution after further proceedings to clarify the corporate structures of some of the respondents, the relationship among them and the role of certain individuals.

The Commission reopened the record with regard to all respondents and suggested that the Presiding Officer reexamine his conclusions regarding violations by, and the possible imposition of penalties or cease and desist orders as to, each of the corporate and individual respondents after the close of the remand proceedings. Noting that Interlink was the apparent link in the chain of shipping transactions at which shipments were consistently misdescribed and misrated, the Commission queried whether the responsibility for such a persistent pattern of Shipping Act violations could be appropriately fixed on a corporation

with no physical assets other than bank accounts and which appeared to employ only two clerical workers with no operational autonomy. Similarly, the Commission questioned whether responsibility for the evident violations of law was appropriately fixed by the Presiding Officer on Consolidated, Cheerio and Liberty in the absence of identification of the individuals responsible for misrepresentations or other actions giving rise to the violations of law, especially in light of Martyn Merritt's testimony that Consolidated and Cheerio were "non-entities" used to screen Interlink's actual customers.

The Order of Remand set forth specific questions of fact and law in order to guide the parties and the Presiding Officer in augmenting the record, but indicated that the questions were illustrative of the issues it wished clarified, rather than definitive of the scope of the remanded hearing. See Order of Remand, 30-34.

With respect to Ariel, the Order of Remand sought additional information concerning the role of J.A. Mott, who was president of Ariel during most of the period of apparent violations. It was also suggested that additional information be sought concerning ASA, owner of a majority interest in Ariel, and the individuals active on behalf of ASA on the Ariel board of directors, as well as the roles of Martyn and Mary Ann Merritt in Ariel prior to 1983. Moreover, it was suggested that further information be secured concerning the owners of Interlink, in addition to

Martyn Merritt, Sharma and Boudart, and the relationship between Ariel and Interlink, as well as the locus of responsibility for internal decision-making and financial accountability in Interlink.

Similar questions were raised in the Order of Remand concerning the ownership and actual operation of Consolidated, Cheerio and Liberty. The ownership of Klaus and responsibility for the day-to-day operations of Oasis and Javelin, as well as the significance of Mary Ann Merritt's designation as U.S. agent for Oasis and Javelin, were also raised.

Finally, the parties were asked to brief issues of law relating to cease and desist orders under the 1984 Act, and whether the corporate veil of separate incorporations can or should be pierced in imposing sanctions.

C. The Further Hearings and Supplemental Initial Decision

Further hearings were held on remand, at which D.I. Mingione and Martyn Merritt again testified. Testimony was also heard from an officer and an employee of the American National Bank and Trust Company of Chicago; Martyn Merritt's former business partner, Peter K. Shauer; Daniel Petrocini and Fred Daya, a partner and employee, respectively, of Alpha; and Mary Ann Merritt. Considerable additional documentary evidence was introduced into the record in addition to the testimony.

In his Supp. I.D. served February 17, 1987, the Presiding Officer made detailed findings of fact based upon

both the original record of the proceeding and the record adduced on remand. In an exhaustive examination of the documents and testimony, he traced the evidence of Martyn Merritt's inception and control of each of the respondent corporations, and the manner in which the various corporate entities were established to hide that participation and control. Most of the corporate entities involved in this proceeding were established by Merritt, acting with or through others, including his wife, in or after mid-1980, following the demise of the shipping entities Merritt had owned and operated in association with Peter K. Shauer since 1971.[5]

The Supp. I.D. found that Ariel had been incorporated in Illinois in July, 1980. The incorporator, shown on the articles of incorporation as both resident agent and incorporator, was Florence J. Pawlowski, who is Mary Ann Merritt's mother. The articles of incorporation were notarized by Mary Ann Merritt. Similarly, other documents, including annual reports and corporate books, do not reflect Martyn Merritt's participation as an officer, director or shareholder of the company prior to 1983. These documents indicate that the President of the company in 1981 and 1982 was J.A. Mott,

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[5] Allegations in the Hearing Order, that the individual respondents had been "previously involved in a similar series of overlapping agency and corporate arrangements with carriers who went out of business in the late 1970's . . .," at least one of which "may have been involved in a similar series of practices . . .", were ultimately dismissed by the Presiding Officer in the I.D. for lack of evidence as to the specific transactions alleged to be violations.

who also owned 200 shares of Ariel stock. However, the initial, "A.", was an error, according to Mrs. Merritt, and the name should have appeared as "J.E. Mott." J.E. Mott is Mrs. Merritt's brother-in-law. Affidavits from Mrs. Merritt's mother and brother-in-law indicate that neither has ever been engaged in the shipping business and had no knowledge of or participation in Ariel.

Further evidence contradicts Martyn Merritt's original assertion that he was employed only as a "special consultant" to Ariel prior to his 1983 acquisition of Roy Brooks' stock and his appointment as President. The agency agreements between Ariel and various other entities appointed by Ariel as its sub-agents in other cities, and between Ariel and the carriers it represented as agent, and the transshipment agreements between Ariel, as agent for the carriers Javelin and Oasis, and Dart and TFL, going back as far as 1980, were signed by Martyn Merritt on behalf of Ariel.[6] Most were dated before 1983. In his dealings with Dart, beginning in 1981, Martyn Merritt represented himself as President of Ariel. The bank documents establishing a corporate account for Ariel represented that Martyn Merritt was, in 1982, and had been, since 1980, President of Ariel, the signature cards were signed by Martyn Merritt and only Martyn Merritt was authorized to sign alone for withdrawals and checks.

The putative owner of a majority interest in Ariel is

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[6] In some instances, the transshipment agreements were signed by Martyn Merritt's assistant, who was authorized by Merritt to sign.

shown on the corporate books as ASA which Merritt at one point identified as an English company. A diligent effort to identify ASA through the government records of Great Britain and the States of Illinois and New York failed to reveal any company of that name which had an interest in Ariel.[7] It was also revealed that the "A. Sethi," who was shown in Ariel corporate documents as representing ASA at directors meetings, is the general manager of Ariel Maritime (U.K.) Ltd., Ariel's subsidiary in Great Britain.

Although Ariel held itself out as the general agent for Interlink, among others, no agency agreement between Ariel and Interlink appears to exist. However, the filing agent for Interlink's tariff is an employee of Ariel who also files tariffs for other lines Ariel represents, including Oasis and Javelin. He also files tariffs for Liberty.

Interlink is an Illinois Corporation established in February, 1980 by Tilak Sharma as incorporator and M.C. Merritt as registered agent. Martyn Merritt, Mary Ann Merritt, Sharma and Boudart have been directors of the company since its inception and are also its officers. Although Sharma is its President, only Martyn Merritt, variously listed as Vice-President and Treasurer on corporate documents, has individual authority to validate checks and withdrawals from the corporation's bank account.

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[7] The records did, however, reveal that an ASA Development Company registered in England was a subsidiary, in an unrelated line of business, of a shipping-related company with which Ariel had done some business.

Although Martyn Merritt testified at the first hearing that he did not own stock in Klaus, the corporate parent of Oasis and Javelin, the record on remand indicates that Klaus was incorporated in Hong Kong in 1978 upon his written instructions, and that the stock was originally to be issued to himself and Peter K. Shauer.[8] Shauer testified, however, that neither he nor Martyn Merritt wished to be openly associated with the company, and therefore arranged to have the stock issued instead in the names of Shauer's mother (C.G.K. Ballermann), Mary Ann Merritt (under her maiden name, Mary Ann Pawlowski), and a new corporate entity, Anglo-Bavarian Investments Ltd., which Shauer and Merritt created and registered in the Grand Cayman Islands. All but the two shares purportedly issued to Ms. Pawlowski and Mrs. Ballermann were to be owned by Anglo-Bavarian. The name "Charles Klaus & Company" was an amalgam of the middle names of Martyn C. Merritt and Peter K. Shauer, and the name "Anglo-Bavarian Investments Ltd." was a reflection of Merritt's English and Shauer's German origins. Following the 1980 split between Martyn Merritt and Peter Shauer, the Hong Kong Registrar General's Department was notified in August, 1981, by Mary Ann Merritt (using her maiden name) that Mrs. Ballermann had

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[8] Martyn Merritt testified at the first proceeding that he did not know who the owners of Klaus were, other than his wife who received one share of stock as a gift from a Mr. Yang (of the accounting firm which handled the incorporation and corporate records of Klaus in Hong Kong) in appreciation for notarizing some documents for him. Merritt's testimony implied, moreover, that Yang was connected with Charles Klaus itself, rather than a firm performing services in response to his own request.

resigned as a director of Klaus, and had been replaced by Florence Wlezen, which is the maiden name of Mary Ann Merritt's mother.[9]

Joshua Dean was incorporated in England in October, 1981. On the same date on which the Memorandum of Association was filed in the names of John Wildman and Mark John Brazier, as officers and owners, a Notice of Change was filed by Martyn Merritt deleting those names and substituting his own and his wife's as secretary and director respectively. Later-filed corporate documents list A. Sethi along with Martyn and Mary Ann Merritt as directors of the company, and indicate that the company is owned by Charles Klaus & Company as a result of a 1983 allocation of stock to Klaus.

The Supp. I.D. found that Alpha International Forwarding on numerous occasions had prepared underlying carrier bills of lading for Interlink, based upon telephone instructions received from an employee of Ariel, pursuant to a verbal agreement entered into with Ariel in a meeting with Martyn Merritt, Sharma and Boudart in 1981.[10] Alpha was represented at that meeting by Daniel Petrocini, a partner, and Fred Daya, an employee, both of

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[9] At a later date, Peter Shauer was informed, in response to his own request to Mr. Yang that his mother's name be deleted as a director of the company, that the change had already been accomplished. The signature on her resignation as a director of Klaus was not her signature according to Shauer, nor had she ever been aware that her name was being used.

[10] Daniel Petrocini testified that he knew the individual respondents as the Ariel Maritime Group, and understood them to represent a variety of companies including Interlink, Consolidated, and Dean.

whom testified at the hearing on remand. Alpha prepared the bills of lading and export declaration for approximately 200 shipments, based upon information provided by an employee of Ariel. The underlying shipping documents were never provided to Alpha. Instead, Alpha received telephone instructions as to the name of the shipper (usually Consolidated), and description of the cargo being shipped. As instructed by the Ariel employee, Alpha aggregated its charges for these services ($5 per shipment) and billed them to Consolidated at 140 Cedar Street, New York City, which paid the bills.[11]

The Presiding Officer found that Ariel, Interlink, Consolidated, Cheerio, Liberty, Oasis, Javelin, Dean, Sharma, Boudart, and Martyn Merritt "were all involved in violating" either section 16, Initial Paragraph, or section 18(b)(3) or both of the 1916 Act. Their involvement, the Presiding Officer found, was directed by Martyn Merritt, who exercised dominant control over all of them and their activities. He further found that Ariel, Interlink, Consolidated, Cheerio, Liberty, Oasis, Javelin and Dean have violated section 16, Initial Paragraph, and that Interlink violated section 18(b)(3). Civil penalties were assessed against the various corporate respondents as follows:

Party	Section Violated	Amount
Interlink	18(b)(3)	50,000

[11] 140 Cedar Street is another entry to and address for the building at 90 West Street in which the Ariel/Interlink offices are located.

Ariel and Interlink*	16	150,000
Ariel and Consolidated*	16	50,000
Ariel, Klaus & Javelin*	16	25,000
Ariel, Klaus & Oasis*	16	25,000
Ariel, Oasis & Joshua Dean*	16	25,000
Ariel and Cheerio*	16	5,000
Ariel and Liberty*	16	5,000

*jointly and severally.

Finally, after finding that Martyn Merritt controlled the operations of all of the corporate respondents and caused "some" of them to violate section 16, Initial Paragraph of the 1916 Act, with the aid of his wife, Sharma and Boudart, and had engaged in actions designed to conceal the violations, he found that cease and desist orders were warranted against the three individual as well as the corporate respondents.

D. Positions of the Parties on Exceptions

In Exceptions filed on behalf of himself, Ariel, Javelin, Oasis, Cheerio, Liberty and Klaus, Martyn Merritt advances a number of arguments relating to the merits of the violations found as well as the imposition and level of civil penalties and the entry of cease and desist orders.

Merritt argues that the spread between the rates paid by Interlink to the VOCCs and charged by Interlink to its actual shipper customers was the normal rate spread created in the

business of an NVOCC.[12] He contends that the findings of section 16 violations cannot stand because no findings were made that the cargo shipped was in actual fact a different commodity from the commodity described to the underlying carrier, or that the NVOCC knew that a different description was being used. Asserting that respondents' testimony as to the nature of the commodities being shipped[13] given at both hearings was neither contested nor contradicted by other evidence at either hearing, he alleges that the Presiding Officer wrongly dismissed respondents' evidence as self-serving and uncorroborated. Respondents, says Merritt, are under no "requirement of 'corroboration . . . .'" Exceptions, 5.

Merritt argues that section 16, Initial Paragraph's requirement that a violation be "knowing and willful" was not proven by Hearing Counsel and was ignored by the Presiding Officer who "premised his conclusion o[n] a 'failure to inform'" Id., 7. Merritt alleges that the commodity description for cellulose acetate was chosen in consultation with a representative of the underlying carrier, and is supported by

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[12] Although Interlink is not listed among those on whose behalf the Exceptions are filed, Merritt's arguments as to the merits of the violations found go to the findings of violation against Interlink as well as others. We note, however, that Merritt's non-representation of Interlink on Exceptions appears to be due to the fact that, at least as of January 1986, he is no longer an officer of that corporation. See Prehearing Conference, January 7, 1986, Transcript, 2.

[13] These arguments relate to the shipments of cellulose film and cigarette paper, described on the underlying carrier bills of lading as cellulose acetate and industrial wrapping paper, which were the major commodities involved.

referral to standard reference works which describe cellulose film as one of the forms in which cellulose acetate is manufactured. Merritt also contends that it was a reasonable interpretation of a tariff which is ambiguous because it contains commodity descriptions for both "cellulose acetate" and "cellulose film," entitling the shipper to the lower rate applying to these two "equally descriptive" terms. Id., 8. Again, Merritt points out that no one contradicted his testimony that Interlink consulted the underlying carriers about the appropriate commodity description to be applied to these shipments and that, absent evidence to the contrary, the Commission may not disbelieve the testimony offered by respondents merely because it is self-serving.

Merritt's arguments with respect to the violations consisting of misdeclaration of the shipments of cigarette paper are similar. Arguing that the paper, shipped on bobbins or large rolls, could have had other industrial uses and "required further processing" before it could be used as cigarette paper, Merritt again asserts, based on his own "uncontradicted" testimony, that the commodity description given the underlying carrier was not inappropriate, and that the rate differential between the underlying carrier bill of lading and Interlink's bill of lading did not give rise to a violation of section 16, Initial Paragraph.

Merritt also argues that the violations of section 18(b)(3) by Interlink found by the Presiding Officer were not intentional.

The findings of violations by Ariel, Cheerio and Liberty are, Merritt asserts, based upon an unlawful presumption by the Presiding Officer that these companies were owned or controlled by the individual respondents during the period when violations may have occurred. This "possible ownership interest" is allegedly not sufficient to find violations by a "separate, independent legal entity . . ." Id., 14. Merritt argues that no actions were taken by Ariel, Cheerio and Liberty which violated the 1916 Act, but "these entities were just names used on Interlink shipments and these companies performed no functions . . ." in connection with these shipments. Id., 16. Merritt accuses the Presiding Officer of inadequately supporting his findings of fact with specific references and citations to the record, as required by the Administrative Procedure Act, 5 U.S.C. § 551 et seq. With respect to the penalties assessed, Merritt argues that they are excessive and are designed for the improper purpose of causing the parties to cease business.

Merritt disputes the Presiding Officer's finding that he, along with Sharma and Boudart, controls and operates Interlink, arguing that the record shows that Sharma, as president, was responsible for the day-to-day operations of Interlink.[14] He makes similar arguments regarding the finding that he substantially owned or primarily operated Cheerio, Liberty or Consolidated.

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[14] For this proposition, once again he cites his own testimony in the first hearing.

The entry of cease and desist orders under the 1984 Act, it is argued, is contrary to the notice requirements of the Federal Rules of Civil Procedure, is unduly broad, and is unlawful because no violations of the 1984 Act have been shown. The cease and desist orders against the individual respondents allegedly have no basis and are unwarranted because no personal involvement by any of them in the alleged malpractices has been shown.

In a lengthy, "specific" reply to the Supp. I.D., Merritt takes issue with various pieces of evidence or testimony and the Presiding Officer's conclusions. He characterizes the testimony of the Alpha witnesses as a "very vague recollection . . . " and that of Peter Schauer as "false testimony of an impeachable witness." Id., 27 and 30. The listing of Mrs. Florence Pawlowski and J.E. Mott as registered agent and president of Ariel on corporate papers filed with the State of Illinois is defended as being sometimes a typographical error, and appropriate reflections of the roles they willingly undertook without being actively involved in the day-to-day business affairs of the company.[15]

Merritt takes particular umbrage at the Presiding Officer's conclusion that various individuals and companies named by Merritt and in corporate documents may not exist at all or may merely be names used by Merritt for purposes of concealment.

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[15] In support of these argument, Merritt has attached as "Exhibits" to the Exceptions notarized statements from Mrs. Pawlowski and Mr. Mott.

Peter Shauer's testimony that he had known Merritt to make up names and to use fictitious persons and companies in their dealings together was again discounted by Merritt as the "false testimony of an impeachable witness." Id., 27. Other instances in which the Presiding Officer expressed doubt as to the existence or involvement of individuals and companies named by Merritt as the real owners of the corporate respondents are responded to by Merritt's production of notarized statements attesting to the existence of these individuals and companies. Statements are included from Anil Sethi,[16] and Raymond Boudart, among others.

Exceptions filed by respondents Sharma and Boudart take issue with the Supp. I.D.'s findings that Sharma and Boudart took part in the violations under Martyn Merritt's direction and should be included in the cease and desist order. Arguing that the issuance of such orders against individuals in the shipping industry should be reserved for the most egregious of transactions, these respondents assert that the record does not support findings that they personally participated in violative activities or that they controlled the corporate perpetrators of the violations. Noting that the I.D., issued after the first hearing, concluded that there was insufficient evidence upon which to base findings of violation against them, Sharma and Boudart contend that no "further significant evidence" of

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[16] Hearing Counsel's attempts to secure answers to questions from Anil Sethi by certified letter sent to his address in England brought no response.

participation by these individuals was adduced at the second hearing. These respondents argue that only their participation in the meeting with the individuals representing Alpha emerged from the second hearing and was alluded to by the Presiding Officer only once in the findings of fact. FF 43, Supp. I.D., 20. Other references to Sharma and Boudart in the findings of fact are said to relate to "corporate organizational matters" which were previously considered and rejected as insufficient bases for a finding of culpability. Even the facts regarding the meeting with Alpha, they argue, were considered in the I.D., based on the testimony of D.I. Mingione, so that no new facts regarding these respondents may be said to have emerged on remand upon which the findings of violations by them might be based.

Sharma and Boudart also argue that there is no basis upon which to conclude that they directed or controlled the corporations found to have violated the 1916 Act, and that the Commission's conclusion in the Order of Remand, and the Presiding Officer's conclusions in both the I.D. and the Supp. I.D., that Martyn Merritt was the dominant figure, were well-founded. Characterizing their roles as those of "minor functionaries" (quoting from the Order of Remand, 14), these respondents contend that neither was in such a position of ownership or control of the corporate respondents as to justify their inclusion in a cease and desist order.

Hearing Counsel, in Reply to the Exceptions, points out that the violations of section 16, Initial Paragraph, found by

the Presiding Officer are well supported in the record. The misdeclarations of cargo to the underlying carriers are said to be clearly evidenced by the descriptions of the cargo commodity, weight and measurement reflected on the packing lists provided to Interlink by the shipper.

Respondents' argument that the commodity could equally well be described as cellulose acetate is said to be inconsistent with the evidence of record which shows that cellulose film is one identifiable and distinct form of cellulose acetate. Hearing Counsel points out that the more specific description of cellulose film contained in a carrier's tariff must be applied if the cellulose acetate commodity shipped is in the form of film. Similarly, Hearing Counsel argues that the mere fact that the cigarette paper shipped was uncut did not convert it to wrapping paper. It notes that Olin's packing lists described it as cigarette paper and Interlink charged Olin its rate for cigarette paper.

Hearing Counsel also points out that no exceptions were made with respect to the remaining section 16 violations involving other commodities or the shipments falsely declared as transshipments.

The issuance of cease and desist orders against all three of the individual respondents was justified, according to Hearing Counsel, because the record shows that all three individuals exercised authority, responsibility and direction in the affairs of the corporate respondents through which the violations were committed. Hearing Counsel points out that:

(1) all three participated in making the arrangements with Alpha through which many of the shipments were misdescribed; (2) the connecting carrier agreements with the vessel operating carriers were negotiated by Martyn Merritt and Raymond Boudart, and Sharma was responsible for much of the day-to-day operation of Interlink; and (3) although only Martyn Merritt could validate checks and withdrawals alone, both Boudart and Sharma were authorized to co-sign checks and were officers of these companies.

DISCUSSION

The Commission has reviewed the testimony and other evidence submitted in connection with both hearings, as well as the arguments made on Exceptions and Reply to Exceptions. The record, as we have previously indicated, is a considerable compendium of facts relating to various shipping transactions as well as the identities of and relationships among the corporate and individual actors involved in those transactions. As the Commission noted in its Order of Remand, the facts regarding the substance of the transactions which constituted violations of section 16, Initial Paragraph and section 18(b)(3) of the 1916 Act were adequately developed in the record and fully set forth in the I.D. These findings have, once again, been presented in the Supp. I.D.

The Commission in its Order of Remand did not rule on the merits of the Exceptions to the I.D., but referred the proceeding for further development of the record concerning the

responsibility and culpability of the various corporate and individual respondents. These issues were thoroughly covered in the second hearing as a result of Hearing Counsel's efforts.

Martyn Merritt testified at both hearings and Mary Ann Merritt testified at the second hearing.[17] The Presiding Officer found Martyn Merritt's testimony "not credible" on a number of points. This conclusion is fully supported by a review of the transcripts of both hearings. Martyn Merritt's testimony is replete with internal contradictions and inconsistencies, is most charitably characterized as vague, evasive and misleading, and is, in major salient points, directly contradicted by other testimony and documentary evidence. Mary Ann Merritt's testimony, in response to compulsory process, was extremely evasive and uncooperative.

The Exceptions provide no basis to set aside the Presiding Officer's extensive findings of fact or conclusions of law with respect to the substance of the violations. Respondents have not offered a defense to the Presiding Officer's findings of violations resulting from the falsely declared transshipment cargo. Martyn Merritt's arguments as to the misdeclarations by commodity description are that: 1) Hearing Counsel has not proven that the commodities actually shipped were other than as described; and 2) the appropriate tariff item was used for the majority of shipments which were described as cellulose acetate

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[17] Neither Sharma nor Boudart testified at either hearing, or entered a separate appearance.

and wrapping paper, based upon consultation with the underlying ocean carriers and reference to those carriers' tariffs.

The evidence adduced by Hearing Counsel included the manufacturer/shipper's packing lists which described the cargo as "cellulose film, first quality" and cigarette paper. These descriptions, and the higher weights and measurements for each shipment, consistently matched those reflected on the Interlink bills of lading and obviously formed the basis upon which the shipper paid the higher rate Interlink charged, rather than the lower rates for cellulose acetate and wrapping paper reflected in the tariffs of the underlying ocean carriers used by Interlink/Consolidated, et al. Merritt's testimony that someone at Interlink had discussed with representatives of those carriers the appropriate commodity description for this cargo, as the Presiding Officer found, is uncorroborated, self-serving and not credible.

With respect to the substance of the violations of section 16, Initial Paragraph and section 18(b)(3), the arguments made on Exceptions to the Supp. I.D. were made both on brief after the first hearing and in Exceptions to the I.D. They were discussed and rejected by the Presiding Officer in the I.D. and the Supp. I.D. Neither the arguments nor the appropriate assessment of them by the Presiding Officer has changed. Therefore, the Commission adopts the analysis and findings of the Presiding Officer on these issues.

The proceeding on remand and the Supp. I.D. added a great deal of information regarding the relationships among the

numerous corporate entities and individuals involved in this proceeding. Except as noted below, all of the issues raised by the Commission in its Order of Remand have been addressed.

The Order of Remand directed the parties and the Presiding Officer to address the application of the 1984 Act to the parties and issues in this case. The Commission specifically asked: (1) whether it had authority to order the corporate or individual respondents to cease and desist from future acts which would violate the analogous provisions of the 1984 Act based upon findings that the parties have violated section 16, Initial Paragraph and section 18(b)(3) of the 1916 Act; and (2) whether it could issue such a cease and desist order against an individual respondent as to whom no specific violations of law were found.[18]

The Presiding Officer's conclusion that a cease and desist order could issue under the 1984 Act based upon violations of the 1916 Act is well-founded and will be adopted. As he found, the "violations under the 1916 Act are identical to those under

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[18] This issue no longer appears to be relevant as a result of the evidence adduced at the second hearing and the findings of the Supp. I.D., although the Presiding Officer dealt with both questions and answered both affirmatively in the Supp. I.D.

the 1984 Act . . . ."[19] The Commission has previously found entry of a cease and desist order based on violations of the 1916 Act appropriate because the elements of the offense remain essentially unchanged. See Marcella Shipping Company Ltd., ___ F.M.C. ___, 23 S.R.R. 857, 871-2 (1986) and Cari Cargo International, Inc., Jorge Villena and Sea Trade Shipping, ___ F.M.C. ___, 23 S.R.R. 1007, 1021 (1986).

Courts have sustained the use of a cease and desist order directed to individuals to prevent avoidance of the legal consequences of the past violations by the creation of new business entities to be used in the same or similar patterns of activity in the future. See Federal Trade Commission v. Standard Education Society, 302 U.S. 112 (1937); Federal Trade Commission v. Ruberoid Co., 343 U.S. 470, 473 (1952); and Bruhns

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[19] The 1984 Act at section 10(a)(1) prohibits "any person" from:

> "knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain[ing] or attempt[ing] to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable."

Section 10(b)(1) of the 1984 Act prohibits any common carrier, "either alone or in conjunction with any other person, directly or indirectly" from:

> "charg[ing], demand[ing], collect[ing], or receiv[ing] greater, less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs . . ."

Compare to section 16, Initial Paragraph and section 18(b)(3) respectively, quoted at note 2, supra.

Freezer Meats v. U.S. Department of Agriculture, 438 F.2d 1332 (8th Cir. 1971), cited and quoted in the Supp. I.D. at 60-61. See also, Sebastopol Meat Co. v. Secretary of Agriculture, 440 F.2d 983, 985 (9th Cir. 1971).

In the matter before us here, the number of different devices and corporate screens used, as well as the sheer number of transactions, and the lengthy period of time over which they continued, provide more than sufficient basis upon which to conclude that these were "knowing and willful" violations by the individual respondents. The evidence of record suggests most strongly that the individual respondents have used the existing corporate respondents to engage in the violations found, and that they have not hesitated to create and use new corporations for their activities as the need arose.

Various activities have been shown which prove that Sharma and Boudart participated in the violations. The Presiding Officer's findings as to the active but subordinate nature of the role played by these respondents are well grounded in the record. Their inclusion as targets of the cease and desist order is appropriate. The Exceptions of these respondents will be dismissed.

The Presiding Officer's often repeated conclusion that Martyn Merritt is the central figure in all of the violative activities and the construction of the network of corporate shells which hid those activities is also well supported by the record. Nevertheless, despite the wealth of detail and clarity of his findings concerning Martyn Merritt's central and

controlling role, as well as the participation of Sharma and Boudart in activities which established the schemes, the Presiding Officer expressly found only that the individual respondents were "all involved in violating" the 1916 Act, and that their "involvement" was directed by Martyn Merritt who exercised "dominant control" over the other individual as well as the corporate respondents.[20] This ultimate treatment of the individual respondents with respect to findings of violations and penalties therefore is the only aspect of the Supp. I.D. which we believe is inadequate.

In spite of the detail and emphasis with which the Presiding Officer found that Martyn Merritt had initiated, directed, dominated and controlled the activities involved in this proceeding which were in violation of the Shipping Act, and his conclusion that these violations could not be shielded by the various corporate entities through which they were committed, the lack of penalties imposed on Martyn Merritt individually appears to have precisely this result. The individual respondents are clearly subject to the 1916 Act's proscription which in section 16, Initial Paragraph runs against any "shipper, consignor, consignee, forwarder, broker, or other person, or <u>any officer, agent or employee</u> thereof . . . <u>directly or indirectly</u>" engaging in the violative activities. [Emphasis added].

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[20] <u>But see also</u> Supp. I.D. at 45: "We have already held that Merritt controls and directs all of the corporations and that he and they engaged in the prohibited conduct set forth in section 16, Initial Paragraph, Shipping Act, 1916."

The Hearing Order raised the issue of penalties in the following language:

> 3. Whether, in the event Ariel, Interlink, Oasis, Javelin, Consolidated, Cheerio, Dean or Liberty is found to have violated section 16, Initial Paragraph of the Shipping Act, 1916 (46 U.S.C. app. § 815) and/or Interlink is found to have violated section 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. § 817), civil penalties should be assessed, and if so, against whom and the amount of such penalties; . . . ."

Order of Investigation and Hearing, 4. The Hearing Order also specified as an issue whether any of the corporations or the named common officers - Sharma, Boudart and Martyn Merritt - should be ordered to cease and desist from violating the 1984 Act, and named as respondents each of the corporations and the individuals.

The Commission's later issued Order of Remand similarly had as its stated purpose to seek additional evidence regarding the "nature, ownership, lines of authority, and interrelationships of the respondents." Order of Remand, 2. That Order noted, in the course of its discussion of the deficiencies in the existing record, that "if such individuals [referring to those whom the I.D. described as 'using' Interlink] were responsible for misrepresentations or other actions giving rise to violations of law, <u>they should be held accountable</u> rather than (or at least in addition to) corporate entities . . . " <u>Id.</u>, 27. Emphasis added. Finally, in describing the legal issues to be briefed by the parties and decided by the Presiding Officer, the Order of Remand expressly put at issue "whether separate incorporations can and should be pierced <u>in the imposition of sanctions</u>." <u>Id.</u>,

34. Emphasis added. Thus, the Hearing Order and Order on Remand, read together, put each of the respondents - including the individual respondents - on notice that they could be subject to assessment of civil penalties.

The Presiding Officer found that it was not necessary to pierce the veil of the various corporations. However, despite his statement that the "decision does not go behind their identities as corporations, but rather holds that as corporations they all took part in the violations of the Shipping Act under Merritt's direction . . . ," he also concluded that "Merritt's interests were so pervasive and predominant as opposed to the interests of the corporations that it would be permissible to disregard the corporate entities." Supp. I. D., 63. We find that the Presiding Officer's conclusions in the Supp. I. D. with respect to the personal culpability of the individual respondents, particularly Martyn Merritt, do not go far enough. We believe, on the evidence adduced at the hearings, that Martyn Merritt must be held accountable for the violations which have been proven, and that accordingly penalties should be assessed against him.

This record is replete with evidence that Martyn Merritt directed and controlled the corporate respondents in conducting and attempting to conceal unlawful activities and that he was assisted in these activities by respondents Sharma and

Boudart.[21] There is no evidence to suggest that any other individual played any significant role in any of these corporate entities, or any of the various schemes through which their activities were carried out. We therefore find that Martyn Merritt, Tilak Sharma and Raymond Boudart violated section 16, Initial Paragraph of the 1916 Act.

We find, further, that Martyn Merritt was the author of and principal beneficiary of the schemes involved in this proceeding. We agree with the Presiding Officer that Merritt was the dominant and controlling figure in the operation of the corporate respondents. Supp. I.D., FF 60 at 26; 45. It was Martyn Merritt who was responsible for establishing the various corporate entities. We note, for example, that it was Merritt who wrote to Mr. Yang in 1978 with instructions to establish Charles Klaus & Co., Ltd. It was also Merritt who instructed Mr. Yang to issue the stock in the new corporation not to himself and his partner, Peter K. Shauer, but to a new corporation, Anglo-Bavarian Investments, Ltd. created and registered in the Grand Cayman Islands by himself and Mr. Shauer. These actions further shielded the ownership of these entities from public scrutiny.

Merritt's activities in this field go back at least to 1971, when he and Peter Shauer founded the Nautilus Shipping Corporation. Merritt's business relationships, including his

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[21] The evidence shows that he was also assisted by Mary Ann Merritt who unfortunately was not made a party to this proceeding.

partnership with Shauer, apparently deteriorated sometime in the late 1970's.[22] Sometime during the period, Merritt apparently "skimmed" the assets of Nautilus and Container Lloyd, two of the corporations he owned and operated with Peter Shauer. FF 31, Supp. I.D., 16. Following his split with Shauer in mid-1980, Merritt moved from Chicago to New York, keeping several of the corporations, including Liberty and Interlink, and starting several new ones. FF 3, Supp. I.D., 9.

It was Merritt who controlled these corporations, for example, through control of their bank accounts as to which he retained sole authority to authorize expenditures (e.g. for Ariel and Interlink). Merritt not only created, but changed the corporate entities and form of their ownership at will, not only when he caused the Klaus stock to be issued to Anglo-Bavarian rather than himself and Peter K. Shauer, but in changing the ownership of Joshua Dean from its "incorporators" to his and his wife's names simultaneously with its creation. FF 35, Supp. I.D., 17. Again, his former partner's mother was removed as a director of Klaus in papers filed by his wife although, according to Mr. Shauer, his mother never knew that she had been a director of the company or signed the paper putatively constituting her resignation. FF 27, 29, 32, 33, Supp. I.D., 15-17.

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[22] The record indicates that several of Merritt's corporations were being investigated by the Commission for unlawful activities during this period. See Transcript, April 17, 1985, 87-106.

The various corporations were used interchangeably to carry out Merritt's illegal activities. Merritt, with Sharma and Boudart, made the arrangement with Alpha forwarding, as Daniel Petrocini testified. These arrangements were carried out by telephone directions from an employee of Ariel, who instructed Alpha to use the name of Consolidated, and to invoice its services to Consolidated, in preparing the underlying ocean carrier bills of lading for Interlink. Those invoices from Alpha were paid by Consolidated, although Merritt testified that the company was a "nonentity". Merritt testified that not only Consolidated but also Cheerio and Liberty were "nonentities" and argues on Exceptions that the corporations - including Ariel - were not "responsible" for the use of their names in these schemes. As their use indicates, the corporations lacked individual personalities, separate and apart from Merritt or each other. We believe that the record in this case repeatedly reflects use of the corporate device by Martyn Merritt to violate the Shipping Act, essentially by defrauding the ocean carriers of freight revenues, and to hide the illegal activities carried out through these inter-woven corporate shells.

It is appropriate to pierce the corporate veil in order to prevent such use of the corporate device to commit fraud and statutory violations. Whether we pierce the corporate veil based upon the line of cases holding that a corporation which is merely the "alter ego" of its major owner or operator may not be used to shield the individual from liability, or on the basis that the corporate entity may be disregarded when it has been

used to evade a statutory purpose, it is clearly appropriate to do so here. See e.g. Quinn v. Butz, 510 F.2d 743, 758 (D.C. Cir. 1975). Compare, Casanova Guns, Inc. v. Connally, 454 F.2d 1320 (7th Cir. 1972).

Separate, artificial incorporations are to be disregarded when the corporate device is used to defraud creditors, create a monopoly, circumvent a statute or for other similar reasons. See generally West's Federal Practice Digest, 3rd, Vol. 21, Corporations, §§ 1.4 and 1.6(4). "[T]he corporate entity may be disregarded when the failure to do so would enable the corporate device to be used to circumvent a statute." Joseph A. Kaplan & Sons v. F.T.C., 347 F.2d 785, 787 n. 4 (D.C. Cir., 1965). See also Schenley Distillers Corp. v. U.S., 326 U.S. 432, 437 (1945); and U.S. v. Lehigh Valley R.R. Co., 220 U.S. 257 (1911); "Piercing the Corporate Veil in Federal Courts: Is Circumvention of A Statute Enough?", 13 Pacific Law Journal 1245 (1982).

Moreover, "a corporation need not be a sham entity in an absolute sense to be ignored." Labadie Coal Co. v. Black, 672 F.2d 92 (D.C. Cir. 1982). Among the factors to which the Court of Appeals directed the attention of the lower court in remanding Labadie Coal, supra, were the nature of the corporate ownership and control, the failure to maintain adequate corporate records and minutes, and the failure to follow corporate formalities, including the approval of stock issues by an independent board of directors. The court noted therein the fact that the corporation was controlled by an individual who owned no stock, but that all of the stock was held by his wife.

Similarly, in this case, Merritt controls and directs the corporate respondents although he allegedly owns only a minor stock interest in some (10 percent in Ariel, 10 percent in Interlink) and none in others (Charles Klaus, in which his wife owns one share and the remainder is held by Anglo-Bavarian). The corporate records for these entities contain numerous conflicting and erroneous statements as to their ownership and control and some of these records have been falsified. In these circumstances, neither the corporations themselves nor his positions in them variously as officer, director and minor shareholder should be permitted to shield Martyn Merritt from liability for the unlawful activities carried out under his direction and control. See U.S. v. Pollution Abatement Services of Oswego, Inc., 763 F.2d 133 (2nd Cir. 1985), cert. denied 106 S.C. 605, 88 L.Ed. 2nd 583 (1985). Cf. U.S. v. Daugherty, 599 F. Supp 671 (E.D. Tenn. 1984).

We therefore disagree with the Presiding Officer to the extent that he found it unnecessary to pierce the corporate veil; we do so here. We hold Martyn Merritt jointly and severally liable for all of the civil penalties assessed against the corporate respondents in the Supp. I.D.

Finally, a number of "Exhibits" were submitted in connection with the Exceptions, most of which were statements to the effect that certain persons whose names were raised in the course of the proceeding as officers, owners or participants in

the respondent corporate entities do in fact exist.[23] The Commission rejects these exhibits as late- and improperly- filed evidence submitted in contravention of Rules 229 and 230 of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.229 and 502.230.[24]

THEREFORE, IT IS ORDERED, That the Supplemental Initial Decision served on February 17, 1987 in this proceeding is adopted except to the extent indicated above;

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[23] Doubts as to the existence of these persons were raised as a result of the testimony of Peter Shauer that Martyn Merritt had been known to use "fictitious" or made-up names of persons as well as corporations in the course of constructing his many-layered shields for his business activities. Despite diligent efforts, the investigation failed to disclose or identify any individual named "Roy Brookes" or "Brooks," putatively a director whose 200 shares of Ariel were later purchased by Martyn Merritt, or ASA Development Company with interests or operations in the shipping industry, which Merritt maintained was the majority shareholder of Ariel. The Supp. I.D. made no specific findings of fact with respect to these individuals and entities, but alluded to both Merritts' and Shauer's testimony as well as the documentary evidence in stating "it may well be that Brookes never existed . . . .", Supp. I.D., 30 and that "ASA had little or nothing to do with the actual operation of Ariel." Id. 31. The Exhibits to the Exceptions submitted by Martyn Merritt to dispute these conclusions are really an attempt to submit additional evidence long after the close of the record in this proceeding and without, moreover, producing the affiants for cross-examination by Hearing Counsel. One of the statements submitted is signed by the elusive Anil Sethi and two others by Raymond Boudart, an individual respondent who did not testify in this proceeding. The statements of J.E. Mott and Florence Pawlowski also submitted as Exhibits appear to contradict their previously submitted affidavits.

[24] The Exhibits are, in any event, irrelevant to the issues in the proceeding because, for the most part, they are merely attempts to show that an individual of a certain name (i.e., Michael Collins, Peter Troy, or Roy Brooks) exists and is known to the affiant. None states that the individuals whose existence is attested to were engaged in relevant activities or related to the corporations involved.

IT IS FURTHER ORDERED, That Raymond Boudart, Martyn C. Merritt and Tilak Sharma are found to have violated section 16, Initial Paragraph and section 18(b)(3) of the Shipping Act, 1916;

IT IS FURTHER ORDERED, That respondents pay penalties for violations of section 16, Initial Paragraph and section 18(b)(3) of the Shipping Act, 1916 as follows:

PARTY	VIOLATION OF SECTION	AMOUNT
Interlink and Martyn C. Merritt, jointly and severally	18(b)(3)	$ 50,000
Ariel, Interlink and Martyn C. Merritt, jointly and severally	16, Initial Para.	150,000
Ariel, Consolidated and Martyn C. Merritt, jointly and severally	16, Initial Para.	50,000
Ariel, Klaus, Javelin and Martyn C. Merritt, jointly and severally	16, Initial Para.	25,000
Ariel, Klaus, Oasis and Martyn C. Merritt, jointly and severally	16, Initial Para.	25,000
Oasis, Ariel, Joshua Dean and Martyn C. Merritt, jointly and severally	16, Initial Para.	25,000
Ariel, Cheerio and Martyn C. Merritt, jointly and severally	16, Initial Para.	5,000
Ariel, Liberty and Martyn C. Merritt, jointly and severally	16, Initial Para.	5,000

IT IS FURTHER ORDERED, That respondents' Exceptions are denied;

IT IS FURTHER ORDERED, That Exhibits 1-10 filed with the Exceptions of M.C. Merritt are rejected; and

IT IS FURTHER ORDERED, That this proceeding is discontinued.

By the Commission.

Joseph C. Polking
Secretary